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IMPEACHMENT INQUIRY

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE  
COMMITTEE ON THE JUDICIARY TO INVESTIGATE  
WHETHER SUFFICIENT GROUNDS EXIST FOR THE  
HOUSE OF REPRESENTATIVES TO EXERCISE ITS  
CONSTITUTIONAL POWER TO IMPEACH

RICHARD M. NIXON

PRESIDENT OF THE UNITED STATES OF AMERICA

Book III

JUNE 20-JULY 23, 1974

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# IMPEACHMENT INQUIRY

## Executive Session

THURSDAY, JUNE 20, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:25 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Bernard W. Nussbaum, senior associate special counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; R. L. Smith McKeithen, counsel; James B. F. Oliphant, counsel; George Rayborn, counsel; Hillary D. Rodham, counsel; Gary W. Sutton, counsel; William A. White, counsel; Fred G. Folsom, tax consultant; Robert McGraw, investigator; and Jonathan Flint, research assistant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. Before we proceed, before we hear from Mr. Doar, I would like to take this opportunity to extend a happy birthday wish to our counsel, Mr. Albert Jenner. I know that even though this is another year, he is as young and as blithe in spirit as anything. So many happy returns of the day. [Applause.]

Mr. JENNER. Mr. Chairman, for the convenience of the members, you have received two documents in your envelope. They go in tab 49<sup>1</sup> [50]<sup>2</sup> in the book and tab 62 [63]. Tab 62 [63] is the letter from

<sup>1</sup> NOTE.—The tab numbers cited throughout the three volumes of executive sessions refer to paragraphs in previously printed publications of the Committee on the Judiciary entitled "Statement of Information" consisting of 12 books containing 21 separate volumes and "Statement of Information Submitted on Behalf of President Nixon", 4 books, all released by the Committee on the Judiciary during July and August, 1974.

<sup>2</sup> The paragraphs of book IV were renumbered prior to publication. The numbers in brackets refer to the paragraph numbers in the printed volume.

Mr. Cox to Mr. Shaffer and paragraph 49 [50] is the court of appeals decision.

MR. EDWARDS. Mr. Chairman, I would like to direct an inquiry to the Chair.

On national television last night, Mr. St. Clair advocated that all of the presentment to date made over the past 4 or 5 weeks by the staff to the committee be made public, be put on the public record. My question to the Chair is is this a request in writing from Mr. St. Clair on behalf of the respondent?

THE CHAIRMAN. Well, the Chair will advise the gentleman that so far as he recollects, Mr. St. Clair sometime back—I do not recall when, but there was a letter that was addressed to the Chair by Mr. St. Clair, in which he pointed out that there had been some material that had been leaked out, to use the word. I do not know that he used that word, but that was the tenor of the letter, and in the light of those leaks, that they were prejudicial and that Mr. St. Clair made a request of the committee that we would not only conduct our sessions in public view and openly, but that we would also make public whatever material had been developed. I believe that that was the letter that was addressed to us sometime ago.

Do you recall, Mr. Doar?

MR. DOAR. Yes; we did receive such a letter that all material received in executive session be made public. We received that letter.

THE CHAIRMAN. But the committee, of course, decided otherwise.

MR. EDWARDS. Thank you.

THE CHAIRMAN. Of course, remember, this is going to be an item that is going to be discussed in one of the business meetings that will be, I think, taking place sometime early next week, the question as to whether or not material will be made public, what material, if any, will be made public that has been developed in these executive sessions.

Before asking Mr. Doar to proceed with today's presentation, I would like to call attention to the fact that this morning's report respecting the deductions taken by the President for the gift of papers contains 10 exhibits of documents which we have obtained from the IRS. I would like to point out that in my judgment, it would be improper to release these documents at this time. The committee members, I know, must have these in connection with the report that is in front of the book. However, there has been a recommendation on the part of counsel—I believe that it is absolutely imperative that we take the report respecting the deductions out of the front of the book and then have them pick up the notebooks at the end of the presentation so that these do not get out to the newspapers. I think when the committee votes what documents to make public, it can then review these documents and edit them and summarize them in whatever way they feel they want to make them available for publication if the committee so decides.

I would seriously advise every member in the light of what has been, I am sure, called to the attention of everyone here, the fact that the question of leaks has become something that I think every member of this committee ought to view very seriously, since I must say that I believe it is not only unfortunate, but I think it is doing the committee a great disservice.



Mr. McCLODY. Mr. Chairman, may I just concur in what you have just said and admonish all members, Republicans and Democrats alike, that the very reputation of this committee is at stake and is threatened by the leaks which have emanated from the committee. I am hopeful that we can have that well in mind, because I think that even more important, perhaps, than the decision we make is the respect of this committee and the reputation of this committee before the American people.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, after I sent you that memorandum this morning with respect to the documents, I called Commissioner Alexander just to verify the status of documents which were received under the executive order. He called my attention to section 301.6109 (a) and (b) of the regulations. Those sections provide that any information—and that is the information we are presenting this morning—obtained from the IRS by such committee or subcommittee shall be held confidential, provided, however, that any portion thereof relevant or pertinent to the purpose of the investigation may be submitted by the investigating committee to the appropriate House of the Congress.

Therefore, under the regulations, it would be my judgment that the committee would not—should hold these documents—that is, the documents themselves—confidential until they submit their report and that when the record is made public, that the documents be summarized in some fashion if the committee feels that they are pertinent to the presentation.

Now, we would like to distribute these documents for the members of the committee. This report contains in the front of the book a report respecting the deductions taken by the President in connection with his gift of pre-Presidential papers. The deduction was taken in the years 1969 through 1972.

In the back of the book are the 10 exhibits to which you and I have heretofore referred. The material is detachable and the report in the front of the book summarizes the data that we have.

With me this morning are two members of the staff, one of whom you have met before: Bernie Nussbaum of the bar of the State of New York, and Smith McKeithen, also of the bar of the State of New York, whom you have not met before.

Also, in connection with the tax matter, with your authority, acting under your authority, we hired two tax consultants to advise with the staff in connection with this matter that is a special field of law. We have one of those consultants with us this morning. He is sitting at my far left. That is Fred G. Folsom, who is a member of the bar of the State of Colorado since 1939. He served in the Tax Division of the Department of Justice from February 1948 through December 1972. He was a section chief of the Criminal Section of the Tax Division for a good many years. He is here to participate in the presentation and answer questions that the committee members may have with respect to this matter.

Now, there are a couple of matters that I would like to call to the committee members' attention about this presentation before we

begin. The first is that this presentation is somewhat different than the other presentations that we have made to date. First: The presentation is not based on sworn testimony. It is based, however, on careful work by the Joint Committee on Taxation, which is this book that all of you have. I believe that they were sent to your office. If they were not, we have some more books here this morning.

Mr. SEIBERLING. Some are different.

Mr. DOAR. It is a different color, but they are the same book.

Also, the staff has conducted interviews, not under oath, but has conducted interviews of a number of witnesses in connection with the gift of the pre-Presidential papers. We can advise the committee members just which witnesses we interviewed and the nature and substance of their statements.

The second thing is that with respect to the action by the President in connection with his income taxes, distinctions have been made between official and unofficial conduct of the President in connection with whether or not conduct, particular conduct, is or is not grounds for impeachment. In this case, of course, the filing of a tax return is unofficial conduct. The President does this as a taxpayer. There is no special responsibility with respect to signing the return or no special authority because he is President of the United States.

The third thing is that every taxpayer who signs a tax return or who earns a particular amount of income, a very modest amount of income, is subject to potential criminal liability if he willfully attempts to defeat or evade a tax; stating it in layman's language, if he cheats on his income tax return or if he signs a return knowing that there are false material statements contained on the return. There are Federal criminal statutes applicable to all taxpayers, all citizens, in that regard.

The other matter is that, and this is for each member to decide, in evaluating the question of grounds for impeachment, one matter that the committee members will have to consider is whether or not a failure by the President to meet his constitutional duty to take care that the laws be faithfully executed is grounds for impeachment. In looking at the conduct of the President with respect to a number of matters, it is for your consideration to make up your mind one way or the other, it seems to me, whether or not the conduct of the President with respect to his filing of his income tax returns might or might not constitute part of a total course of conduct that would or would not warrant a conclusion by individual members of this committee that the President of the United States failed to take care to see to it that the laws of the United States were faithfully executed, contrary to his constitutional duty and to his oath that the President takes when he assumes office.

Now, I mention that because I think in fairness, when you get into income tax matters, we have to discuss some matters that are of considerable public interest, and I urge on all of you the importance of reserving judgment about this particular matter until you have heard all of the presentation and considered whatever materials or matters that the President may wish to present in connection therewith, because we are going to have to, in making this presentation, call your attention to criminal statutes, call your attention to procedures and

standards that are followed, generally followed by the Department of Justice in reviewing conduct by the ordinary taxpayer in connection with the filing of income tax returns.

Mr. McCLORY. Mr. Chairman, may I just ask this? I do not want to open up a can of worms here.

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. What you are telling us is something that might have application with respect to other parts of this case? You are just suggesting for our consideration that this subject of the President's responsibility to see that the laws are faithfully executed is something for us to consider in this connection; what you are also telling us, are you not, is that that might be something for consideration with respect to other aspects of this total inquiry?

Mr. DOAR. Yes, I am.

Mr. LATTI. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTI. To my knowledge, this is the first time Mr. Nussbaum has appeared before this committee?

Mr. DOAR. No, Mr. Nussbaum has been here with me in connection with the preparation of subpoenas, in connection with other matters. This is not the first time he has been here.

Mr. LATTI. Do we have a biographical sketch or could we have a biographical sketch of Mr. Nussbaum?

Mr. DOAR. Certainly, but I would be happy to just outline that for you now.

Mr. Nussbaum is a resident of the State of New York. He lives in one of the suburbs of New York. He graduated from Harvard Law School with honors in 1961. He was on the Harvard Law Review there.

He then joined the U.S. attorney's office for the Southern District of New York, and he worked in the Southern District of New York for 5 or 6 years, both as a trial lawyer and as an, either a deputy or section chief in the Criminal Appeals Section of the Department of Justice, U.S. attorney's office, in the Southern District of New York.

Since then, he has been a partner in a leading firm of 30 or 40 lawyers in the city of New York and has had a distinguished record in connection with the preparation and trial of all sorts of civil cases. His practice has been largely civil since he left the U.S. attorney's office.

He is also a teacher, an instructor at the Columbia Law School.

Mr. McCLORY. Will the gentleman yield?

Mr. LATTI. I will be happy to yield.

Mr. McCLORY. Was Mr. Nussbaum formerly attorney for one of the members of this committee in connection with some litigation?

Mr. DOAR. Yes, at one time. He represented Ms. Holtzman in connection with an election contest in the Borough of Brooklyn.

Mr. McCLORY. He is not currently representing any member of this committee?

Mr. DOAR. No; he is not currently representing Ms. Holtzman. Ms. Holtzman for a short time, as I understand it, was an associate of the firm that Mr. Nussbaum was a partner in. He represented her in connection with just the ordinary professional assignments he had. He is a friend of Ms. Holtzman's, but the relationship was professional in this case, and it was finished at the time that I interviewed Mr. Nussbaum for this.



Mr. McCLORY. He won the case?

Ms. HOLTZMAN. Oh, he did.

Mr. LATTA. One further question. When was he appointed to the Southern District of New York?

The CHAIRMAN. I am sorry: I think that this line of questioning is certainly not in order. Mr. Nussbaum's biographical sketch, along with the biographical sketches of all other members of the staff are included in a document that has been before this committee and I would advise the gentleman if he is interested to inquire into that document.

Mr. LATTA. I might advise the chairman that I am interested and I will advise it thoroughly.

Mr. SARBANES. Mr. Chairman, I think the point ought to be made on this point that Mr. Nussbaum was presented, as I recall, to the committee at an earlier time, at the very outset. With due respect to the gentleman from Ohio, this has happened before. Now, maybe the gentleman is not aware of it, but I do think that the thrust of his question misses an important simple factual matter. Mr. Nussbaum was presented to the committee, as I recall, at the very outset, when we met a number of the principal attorneys in this matter and his biography was included, it is my recollection, in the initial biographical material furnished to the members of the committee.

Is that not correct?

Mr. DOAR. That is correct.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman. I would just like to correct the record in one respect. That is that the firm that Mr. Nussbaum is a member of represented me and not—that was the capacity in which Mr. Nussbaum was associated with my case.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Nussbaum will make the initial presentation with respect to this matter and go through this, review this notebook with you. Also, Mr. McKeithen will participate in that presentation.

The CHAIRMAN. Mr. Nussbaum.

Mr. NUSSBAUM. Thank you, Mr. Chairman.

The report that the committee has in front of it is basically divided into two sections. The first section is a sequence of events respecting the deduction for the years 1969 through 1972 for a gift of pre-Presidential papers. The gift claim having been made on March 27, 1969. That is the first section.

The second section of the report is a sequence of events respecting the reopening of the President's tax returns in 1973. Now, as Mr. Doar indicated, we are not going to do this in a normal fashion. This has not been structured in a paragraph form but in a report form. What I intend to do basically is just simply go down some of the highlights of the report and bring them to the attention of the committee. The committee will be able to take the report itself after this meeting and read it in more detail. I do not purport to cover every particular fact in this report. I am just sort of going to tell the story the way the report tells the story—or try to tell the story. I will be referring from time to time to certain documents, both of which are attached as exhibits to the report itself—the report we are giving to



the committee—as well as exhibits which are attached to the joint committee report.

Now, I should say at the outset that this report was based on the following things:

It was based on the joint committee report, which is very extensive as the members know, which is based on materials obtained by the joint committee, which they consented to let us view, members of our staff. It is based on the IRS audit report and materials which the IRS has supplied to us from recent days.

It is also based on interviews that the staff has conducted of the major or the principal figures in this story, namely, Frank DeMarco, who was the President's tax attorney and a partner of Herbert Kalmbach; Edward Morgan, who was a deputy counsel to the President; Ralph Newman who is an appraiser and appraised the pre-Presidential papers; Mr. Blech, who is an accountant for the President; Richard Ritzel, who is an attorney, a partner in the President's former law firm in New York, and Mr. Alexander, who is present Commissioner of Internal Revenue. Each of these people was interviewed in some detail and some depth by members of the committee staff. The results of those interviews, to the extent that they are pertinent, is contained in the report.

Now, the story of the 1969 gift really, in a sense, can be said to begin in 1968. The President stated that he met—President Nixon stated that after his election but prior to his inauguration, he had a meeting with President Johnson, at which President Johnson suggested to President Nixon—President-elect Nixon at the time—that the President consider whether or not to take a deduction for certain of his papers, pre-Presidential papers, because President Nixon had not yet been inaugurated. Following this discussion with President Johnson, President Nixon contacted one of his partners, or one of his soon-to-be former partners in his law firm, Richard Ritzel, and they had discussions whether or not the President-elect should take a deduction for a gift of papers.

Now, after these discussions, Mr. Ritzel prepared deeds or possible deeds, alternate deeds, for the President's consideration, for President Nixon's consideration, and sent these deeds to the President. This was all in December 1969. In addition, he sent to the President a memorandum respecting these deeds. This is a memorandum from Mr. Ritzel to President-elect Nixon.

Now, we have obtained a copy of that memorandum from the materials supplied by the Joint Committee and what I would like, with the members' permission, is for Mr. McKeithen to read that memorandum. It is about four pages but I think it is worth reading to the committee.

Mr. McCLORY. Do we have copies of that?

Mr. NUSSBAUM. No; you do not have copies of that memorandum. The only exhibits attached to this report which you have before you are exhibits we have obtained from the IRS in recent days. The memorandum was not attached as a copy to the Joint Committee report. That is the reason we are reading the memorandum to you now. Most of the other exhibits to which we will be referring are copies of the Joint Committee report and you will have them in front of you.

Mr. McCLORY. Whose memorandum is it?

Mr. McKEITHEN. This is a memorandum, Congressman, dated December 27, 1968.

Mr. SEIBERLING. Mr. Chairman, could we have copies of that memorandum eventually?

Mr. DOAR. Yes.

Mr. SEIBERLING. Thank you.

Mr. McKEITHEN. The memorandum is addressed to President-elect Nixon from R. S. Ritzel, R-i-t-z-e-l. The memorandum reads as follows:

Included herewith are two forms of chattel deed running from you to the United States of America. The one marked "A" is a simple form of conveyance of paper, manuscripts, and other materials without restriction of any kind except that they are ultimately to be placed in the Presidential archival depository. The second, marked "B," is a form of chattel deed which conveys such papers, manuscripts, and other materials to the United States, but places restrictions as to their use. The limitations briefly are as follows:

1. You shall have the right of access at all times.
2. During such time as you hold the Office of President of the United States, no other persons shall have right of access except those designated by you in writing to the General Services Administration.
3. The items are to be placed in a Presidential archival depository at such time as the same is established.
4. Item Nos. 3 and 4 in the chattel deed are technical provisions which we feel are necessary for the purposes for which the gift is being made.

I should stop right now and note that those paragraphs 3 and 4—as a matter of fact, let me right now direct the committee's attention to the deed, the second alternate deed to which Mr. Ritzel is referring in his memorandum. That is included in the joint committee report in the appendix on page A-3.

The CHAIRMAN. Do we have an extra copy of that report?

Mr. SEIBERLING. Mr. Chairman, is this the deed, one of the two forms of deed that was submitted by Mr. Ritzel?

Mr. McKEITHEN. Yes, sir, that is correct.

Mr. SEIBERLING. This is the second form?

Mr. McKEITHEN. This is the second deed to which Mr. Ritzel is referring in his memorandum and the deed which is included in the joint committee report because it was the deed which the President executed.

As you see, on pages A-6 and A-7 are the paragraphs 3 and 4 to which Mr. Ritzel is referring in his memorandum.

Let me—perhaps I should go back and read Mr. Ritzel's descriptions of the limitations in the deed.

He says as follows:

The limitations, briefly, are as follows:

1. You shall have the right of access at all times.
2. During such time as you hold the Office of President of the United States, no other persons have right of access except those designated by you in writing to the General Services Administrator.
3. The items are to be placed in the Presidential archival depository at such time as the same is established.
4. Items Nos. 3 and 4 in the chattel deed are technical provisions which we feel are necessary for the purposes for which the gift is being made.

Then Mr. Ritzel goes on to say:

By way of explanation, we have been culling your files in our warehouse and likewise have been in touch with Ralph Newman, who has been the appraiser for the L. B. J., Truman, Kennedy, and other gifts of Presidential papers to the

United States. Newman will be in New York on Monday to go over items which have been culled to date from the files. It is not our intent to give all of your papers at this time, but rather, only such as will be appraised at a value which will be somewhat in excess of the maximum charitable deduction which you can take on your 1968 income tax return. I have been in touch with Marty Feinstein—

Who, by way of explanation, is the President's accountant in New York? That is not in the Ritzel memorandum. That is my explanation.

And he advises me that this figure is about \$60,000. The reason for the two chattel deeds is that at the present time, we are not completely clear that there are sufficient papers which could be made available to the public at the moment and which would not be considered in the sensitive area. If we do find by Monday that there are such papers, then we will use only the deed marked "A". If, however, we feel that there may be some which should be restricted from public perusal while you are the President of the United States, we will use the deed marked "B". It is more advantageous to use "A" only, but we have not had the time since I discussed this matter with you Sunday last at your apartment to complete a sufficient examination of the files to be sure that there are papers and manuscripts which would not be considered to be in the sensitive area. The reason for the unrestricted gift is that the value for tax deduction purposes will undoubtedly be higher than those upon which restrictions are placed. I would therefore suggest that both deeds be executed by you in duplicate.

Mr. Krogh, who is the bearer of this memorandum and the enclosures, will bring them back to New York so that they will be available on Monday. At that point, we will be able to go over the papers with Newman and attach the next schedules for which I presume we will have your authority to either or both deeds and make delivery to the General Services Administration.

I might also add for your information that the forms of deeds have been cleared both with the Commissioner of Internal Revenue and the General Services Administrator and arrangements have been made for a representative of the General Services Administration to receipt for the papers to be delivered at this office on either Monday or Tuesday of next week so that the matter will be completed before the end of the year.

The memorandum ends with the initials "R.S.R."

Mr. NUSSBAUM. Following the receipt of this memorandum by the President from Mr. Ritzel, the President and Mr. Ritzel had a discussion over the telephone on December 28, 1968, and the President stated that he had decided to sign the deed containing the restrictions. He did sign before the end of the year the deed containing the restrictions. As Mr. McKeithen indicated, if you look on page A-3 of the joint committee report, more particularly on page A-7 of that report, you will see—that is the last page of the deed—you will see the signature of Richard M. Nixon. The date is December 28, 1968. Underneath that, you will see a signature which was put on behalf of the General Services Administration on December 30, 1968. This is on page A-7 of the joint committee report.

Mr. LOTT. You say the date was December 28?

Mr. NUSSBAUM. Excuse me?

Mr. LOTT. Repeat the date, the 28th?

Mr. NUSSBAUM. Yes; the President's signature is dated December 28, 1968.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I have to ask this question since I do not have a copy of the letter to confirm my own impression of what the gentleman just said, so I will ask you about the accuracy of my own impression.

The letter to the President explaining the two options with regard



to the gift, one being a restricted gift and the other apparently being an unconditional one, advised the President that that fact bore only upon the value to be assigned for the papers given and not upon the validity of the gift itself. Am I correct in understanding it that way?

Mr. McKEITHEN. Mr. Congressman, the memorandum dealt with two principal points, both the value of the papers and the sensitivity issue in connection with the restrictions. The memorandum did not deal with the validity of the deed itself as it would be affected by the restrictions.

Mr. WIGGINS. All right, fine, thank you.

Mr. FLOWERS. Did not it say that he had cleared it with the Commissioner of Internal Revenue?

Mr. McKEITHEN. That is correct.

Mr. NUSSBAUM. Yes; he did.

Mr. FLOWERS. What do you think he cleared it for, then? There would be no purpose in clearing it with him if it were not for tax purposes; would it?

The CHAIRMAN. Well, he cannot say.

Mr. FLOWERS. Well, I cannot surmise any other reason for him to submit it to the Commissioner of Internal Revenue if it were not for the purpose of seeing if it were adequate.

Mr. NUSSBAUM. That is probably correct, Congressman. The only thing is there is no discussion in the memorandum with respect to the possibility, for example, that one deed might not be sufficient. If it is too restrictive. He does not discuss that point in the memorandum although, as you point out, he does say in the memorandum that the deed was cleared with the Commissioner of Internal Revenue and obviously the only reason to clear that with the Commissioner of Internal Revenue is for tax purposes.

Mr. DENNIS. But, Mr. Chairman, if I may make an observation, unless I completely misunderstood what the gentleman read, he says that the unrestricted gift would be more advantageous and then he proceeds to give the reason, which is that the value would be greater if it were unrestricted and he says nothing when he is discussing that very point as to why it is advantageous to indicate in the slightest that there would be any question as to its validity. Now, is that not true?

Mr. NUSSBAUM. That is correct.

Mr. DENNIS. Thank you.

Mr. McCLORY. If the gentleman will yield, he used the word "validity" and that is the thing that concerned me, that the memorandum does not indicate the validity of the deeds and the purpose of submitting to the Commissioner was to establish their validity for tax purposes.

Mr. NUSSBAUM. No; it does not indicate that fact. It just says it was cleared with the Commissioner. That is all it says. It does not say the reason why it was cleared with the Commissioner of Internal Revenue.

Mr. McCLORY. Mr. Chairman, what would the other reason be for clearing it?

The CHAIRMAN. I do not think—

Mr. DOAR. Congressman, I think there are two things. One would be the validity of the deed with respect to a transfer of the papers



and the other was the deductibility of a valid transfer. Now, obviously, a deed that has restrictions on it is a valid transfer and the question is whether or not, because of some IRS regulations, that restricted transfer is not one that qualifies as a charitable deduction in the year of the transfer. I suppose, I think it is apparent that the IRS official to check this was considering whether or not it was deductible. But it does not say that in the memorandum.

Mr. KASTENMEIER. Mr. Chairman.

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I thought that you said that the forms were approved by the IRS. You did not make it clear whether the forms pertained to this particular formulation or rather the forms in general, the two forms of deeds were in general approved by the IRS. That point did not come across to me.

Mr. NUSSBAUM. Mr. Ritzel has informed us in the interview that these two particular forms, these two alternative forms, were presented to the IRS and approved by the IRS.

Mr. KASTENMEIER. That is, for Mr. Nixon, not as general forms that had heretofore—

Mr. NUSSBAUM. That is correct, for Mr. Nixon. And that is what the memorandum says.

I might also add for your information that the forms of deeds have been cleared both with the Commissioner of Internal Revenue and the General Services Administrator. But it is these particular forms, because that is what Mr. Ritzel told us.

In any event, the President did sign the deed which contained the restrictions and that deed was countersigned by the General Services Administration on December 30, 1968. Near the end of December 1968, Mr. Newman went up to the offices of Nixon-Mudge, which was President Nixon's law firm in New York, looked through the papers, segregated out those papers which would constitute the gift of the 1968 papers, a schedule was prepared of those papers, it was attached to the deed which was signed by the President, a GSA truck came to Nixon-Mudge and physically took those papers from Nixon-Mudge, the 1968 gift papers, and drove them, took them to a Federal records center in New York, where the papers remained until March of 1970.

That is basically the chronology which is given in somewhat more detail in our report, but that is basically the chronology of the 1968 gift.

Mr. MARAZITI. Mr. Chairman, just a point of clarification.

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Do I understand that the committee will be furnished in due course with a copy of the memorandum?

Mr. NUSSBAUM. Yes.

Mr. DOAR. Yes; you will.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Will counsel yield?

I notice in page 2, you say that President Nixon signed the executed restrictive deed. In page 3, it says in substance in a memo apparently attached that this gift was free and clear with no rights re-

maining in the taxpayer. Did they consider the restrictions which limited the accessibility of the material as a right remaining in the taxpayer or not?

Mr. NUSSBAUM. Well, Congressman, what you are referring to on page 3 of the memorandum is the income tax return itself. The income tax return, we understand, stated in substance, as you indicated, that the gift was free and clear with no rights remaining in the taxpayer. The deed itself, as you can see from page A-3, does contain certain restrictions, and really, we have no explanation for that other than perhaps the accountant felt that it was accurate to say that the gift was free and clear with no rights remaining in the taxpayer. It is for the committee to make a decision—I think it is for the committee to make a decision with respect to the significance of what the tax return says as contrasted with what the deed says. I do not think it is for us to make that distinction.

The CHAIRMAN. Well, that is a matter for the committee to decide upon. I think you have pointed out the questions that arise.

Mr. SEIBERLING. Mr. Chairman?

Mr. BUTLER. A question, Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Nussbaum, was a written ruling issued by the IRS to your knowledge at the time these forms were cleared with IRS?

Mr. NUSSBAUM. No. To my knowledge, there was no such written ruling. As I understand it from Mr. McKeithen, who just told me this, IRS does not recall reviewing these particular forms of deed.

Mr. SEIBERLING. Is that the normal practice, or is it usual to get a written ruling?

Mr. McKEITHEN. Congressman, I think this was a somewhat unusual situation in that the President-elect of the United States was considering making a gift of this kind. As I understand it from my conversation with his counsel at that time, Mr. Ritzel, one of Mr. Ritzel's partners drafted both versions of the deed. He took those versions of the deed to Washington, D.C., discussed them with officials of the General Services Administration to make sure that the deeds were sufficient for National Archives purposes, and on the same day, went to the then Commissioner of the Internal Revenue Service, Mr. Sheldon Cohen, and discussed them with him.

Now, I may point out that on page 12 of the Joint Committee report, it is stated that Mr. Tannian himself acknowledges that he saw Mr. Cohen, but that Mr. Cohen did not give any opinion as to the validity of the deeds. Mr. Cohen himself also states that. However, Mr. Ritzel insisted when we talked with him that there would be no other reason for Mr. Tannian to have presented the deeds to Mr. Cohen, or indeed to have seen him at all unless it were for the purpose of confirming the validity of the drafts as written by Mudge, Rose.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

I understand the date of the Ritzel memorandum to the President was December 27, 1968? Is that correct?

Mr. NUSSBAUM. Yes.

Mr. McKEITHEN. Yes.

Mr. FISH. And it refers there a couple of times to a Monday. What was the day of the week of December 27, 1968?

Mr. NUSSBAUM. December 27 was a Friday.

Mr. FISH. So Monday would be what?

Mr. NUSSBAUM. December 30.

Mr. FISH. Was the physical custody of the 1968 documents taken over by the GSA in that truck that you talked about, did that take place on either the 30th or the 31st of December?

Mr. NUSSBAUM. Yes, I understand it took place on the 30th, Congressman. That is reflected on page 12 of the Joint Committee report which discusses the delivery of the 1968 papers.

Mr. FISH. So there is no issue here of the completion of the gift?

Mr. NUSSBAUM. There is no issue here of the completion of the gift.

Mr. BUTLER. One question, Mr. Chairman.

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Was the deed, a copy of the deed, filed with the income tax return on which he claimed it as an unrestricted gift?

Mr. McKEITHEN. We have not viewed that income tax return so I cannot make a definitive statement to that effect. However, a copy of the deed was not filed with the 1969 income tax return and there, it would seem to me that there would be no reason for the deed to be filed with the 1968 income tax return, since the description of the terms, of some of the terms of the gift—that is, as to the restrictions or lack of restrictions on the gift—was contained in the papers filed with the 1968 income tax return.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Nussbaum, was it you who conducted the interview with Mr. Ritzel?

Mr. NUSSBAUM. No, Mr. McKeithen conducted the interview with Mr. Ritzel, and another member of our consultant staff.

Mr. OWENS. Mr. McKeithen, in your interview, did you discuss whether Mr. Ritzel had discussed possible tax implications of the differing kinds of deeds in his conversation on the 28th with the President?

Mr. McKEITHEN. Mr. Ritzel indicated to us that in his conversation on the 28th with the President-elect, they discussed mainly the question of access to what sensitive papers might have been in the collection decided. He said they did not, he did not narrow his description of the discussion any more than that.

Mr. OWENS. So far, he did not say that he did or did not, then?

Mr. McKEITHEN. That is correct.

Mr. OWENS. Mr. Nussbaum, when you just answered in response to Mr. Fish that there is no question of the delivery of the gift, you are talking about delivery of—is that what you said, that there is no question that the materials were delivered to GSA before the end of the year?

Mr. NUSSBAUM. As I understand it, that is correct, yes.

Mr. OWENS. You were not making a legal—

Mr. NUSSBAUM. No, I am talking about physical delivery, physical picking up of the papers and taking them to a Government office building, a Federal records center in New York.



Mr. OWENS. Thank you.

Mr. NUSSBAUM. What I would like to do now with the chairman's permission is turn to 1969 and just touch on some of the events mentioned in our report.

First, I would ask the committee to turn to page A-155 of the Joint Committee report, which is a memorandum to the President from John Ehrlichman. That memorandum is dated February 6, 1969. As you can see, in that memorandum, the subject of which is charitable contributions and discussions, Mr. Ehrlichman writes to the President that "as you know"—and I am just paraphrasing, since the memorandum is in front of the committee—we arranged for the maximum 30 percent charitable gift tax deduction in 1968 by donating a portion of your papers appraised at the necessary amount to the United States.

Then he goes on to say that this year, you are in a position to make charitable contributions up to 30 percent of your joint income. Then he goes on to suggest that of that 30 percent, 20 percent would come from income which he receives from his writings. Of this 30 percent—without reading the entire memorandum, I would direct your attention to the second paragraph:

I would suggest that we arrange a schedule of charitable contributions from sales of your writings so you can give to those charities you select 20 percent of your adjusted gross income. The remaining 10 percent will be made up of a gift of your papers to the United States. In this way, we contemplate keeping the papers as a continuing reserve which we can use from now on to supplement other gifts to add up to the 30-percent maximum.

Then on the next page, he discusses certain of the President's writings, publication of those writings.

Now, on the next page, there are some handwritten notes, and they are apparently handwritten notes of the President. He says, one, "Good." And two, he says, "Let me know what we can do on the foundation idea." There is no mention, obviously, in this memorandum of any gift, any bulk gift of papers, any \$500,000 gift or any large gift of papers, as is evident to the committee.

The next significant event, or one of the next significant events—

Mr. HOGAN. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Hogan?

Mr. HOGAN. What was Mr. Ehrlichman's title at that time?

Mr. NUSSBAUM. Mr. Ehrlichman then was counsel to the President.

Mr. HOGAN. Counsel to the President?

The CHAIRMAN. That is correct.

Mr. NUSSBAUM. That is right.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Mr. Nussbaum, you said there was no mention of any bulk gift of papers in the memorandum. The last paragraph of page 155, "The remaining 10 percent will be made up of a gift of your papers to the United States." That is not a bulk gift of papers? Now, it is a judgmental decision as to what they are talking about there.

Mr. NUSSBAUM. That is correct, Mr. Congressman.

Mr. FLOWERS. When you are talking about 10 percent of adjusted gross income of a man making \$250,000, you are talking about \$25,000 worth of deduction, are you not? Each year?

Mr. SEIBERLING. Would the gentleman yield?

Mr. NUSSBAUM. Ultimately, Congressman, the President's tax return reflects that a gift was given of approximately \$576,000, which would be sufficient to cover approximately a 5-year period. Now, it is for the committee to make a judgment, of course, as to what this memorandum means and it is not for the staff to make such a judgment. But one interpretation of the memorandum can be contemplation, at least on February 6, 1969, that they would not make a gift, a large gift of \$500,000 or any similar amount of papers, but rather, the President's 30-percent charitable deduction would be made up, 20 percent of that or two-thirds of that, really, would be made up by a gift of the proceeds of his writings, and an additional 10 percent would be made up by a gift of papers, and the papers would then be kept year after year and given as necessary to make up that 10 percent. That is one possible interpretation of this memorandum. There may be other possible interpretations.

Mr. FLOWERS. Is it not a fact, though, and I do not intend to argue this, that the law had already been passed previously which would require that any public official donating papers do it by a time certain which was already established?

Mr. NUSSBAUM. No, that is incorrect. At this point in time, February 6, 1969, there was no such law. At this point, there were no restrictions, which were later passed, with respect to a President or anybody else giving papers. You will see as we continue in the chronology that it was only in the late spring of 1969 that the first suggestion became apparent that such a law might be passed, and that law was ultimately passed at the end of December 1969. That is when it became law.

Mr. SEIBERLING. Would the gentleman yield?

Mr. FLOWERS. Sure.

Mr. SEIBERLING. The last sentence on page A-155, it seems to me, is the key to this because it says, "We contemplate keeping the papers as a continuing reserve which we can use from now on to supplement other gifts to add up to the 30-percent maximum."

In other words, they were going to give a partial gift of these papers each year to supplement the other 20 percent. As I understand it, and Mr. Nussbaum can correct me, the passage of the law is what made that proposal no longer feasible. Is that correct?

Mr. NUSSBAUM. If that was the proposal, if that is your interpretation of the proposal, the passage of the law did make that proposal no longer feasible.

Mr. McCLORY. Mr. Chairman, may I ask this question for clarification?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. The part you omitted there related to proceeds of his sale of his book "Six Crises" and the effect that the proceeds would be paid directly to the Boys Club of America, Young People of America—was that done? Do you know?

Mr. McKEITHEN. Congressman—

Mr. McCLORY. That would not involve a deduction. That would involve an assignment and then a direct payment. I just wonder if that was done.

Mr. McKEITHEN. As it eventually occurred, proceeds of his writing were assigned directly by the President to certain organizations, including, I believe, the Nixon Foundation. On page 210 of the Joint Committee report, paragraph No. 6 on that page deals briefly with the assignment of royalty income to charities. We do not have any information as to exactly which charities this income was assigned and the amount of such assignments.

Mr. McCLODY. You do not know whether the proceeds from the sale of "Six Crises" went directly to the Boys' Clubs of America?

Mr. McKEITHEN. I do not know.

Mr. McCLODY. Thank you.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Members of the committee, it might be helpful to summarize the legislative history of this particular section of the IRS Code that provides for deductions of gifts of papers to the Government, for example public men's papers.

In February of 1969 there was a law on the books of the United States that permitted taxpayers to make gifts of papers to the Government and claim a deduction of the fair market value of the gift. There was also a provision in the Code that permitted taxpayers to make gifts of such papers so that they could carry forward the deduction for 5 years, if they so desired.

The amount of the deduction for any particular year, regardless of the size of the gift, was limited to 30 percent of the taxpayer's adjusted gross income, so that if a person in one particular year desired, he could give 200 percent of his adjusted gross income and carry forward 170 percent of that amount for 5 years. I am sure that many of the members of the committee are familiar with other carry forward and carryback provisions of the Internal Revenue Code.

Now, sometime in the late spring in one of the committees, on the Tax Committee of the House of Representatives, consideration began to be given to the elimination of this provision and to putting a stop to it. Ordinarily when the tax laws are amended they are usually amended prospectively; that is, the taxpayers of the United States receive notice that at some date in the future they will no longer be able to claim a particular deduction. That is ordinarily the way deduction eliminations are handled by the Congress, if I understand it correctly.

In the end of July or right after the 1st of August the committee of the House that was preparing the amendment to the IRS, including a number of reforms to the IRS, included a recommendation or I believe the House passed a bill that eliminated this particular deduction as of the close of 1969. And when the bill got over to the Senate there was debate on the floor and in the committee, and in the Senate Finance Committee as to the fact that this was not an appropriate kind of deduction, that a great number of persons had taken advantage of this deduction, of this claim by giving papers, and that it was the kind of a thing that ought to be eliminated. As a result of the viewpoints of several of the U.S. Senators who were on the committee, the Senate Finance Committee passed a bill that provided that the deduction be eliminated, but eliminated retroactively back to December 31, 1968.

So, when the bill came to conference in the end of November 1969, you had a House bill that provided the deduction would be eliminated



as of December 31, 1969, and a Senate bill that provided it would be eliminated as of December 31, 1968. In the conference committee, the committee members of the House and the Senate compromised and set the elimination of the deduction for July 26, 1969, and so that is the legislative history of the elimination of this deduction that included the right to give away enough papers so that you could accumulate deductible items for 5 years.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman. Mr. Nussbaum, in line with the question asked by Mr. McClory regarding the assignment of writings or proceeds of writings to charitable groups such as the Boys' Clubs, even though assignment is made of the royalties to a charitable organization, the taxpayer still has to claim those proceeds as income, and then takes the assignments as a deduction, is that correct?

Mr. NUSSBAUM. That is correct. As the memo from Mr. Ehrlichman to the President states: "While we will have to account for those proceeds in gross income, the amount will be deductible as a charitable contribution."

Mr. HOGAN. May I ask a question? One interpretation is possible that Mr. Doar outlined that they have been alleging the deduction over a 5-year period, but is it not also possible that in the Ehrlichman memorandum that they were referring to new papers which would be accumulated during that year? In other words, Presidential papers are accumulated on a constant basis.

Mr. NUSSBAUM. Presidential papers are accumulated on a constant basis, but the 1968 gift and the 1969 gift consisted solely of pre-Presidential papers. But, as to whether it is possible that Mr. Ehrlichman had that in mind, the accumulation of Presidential papers, I guess I would have to say that is possible, yes.

Mr. HOGAN. Thank you.

The CHAIRMAN. The committee will please defer questions until we have gotten through with this presentation. I think the presentation will not take too long, and I think the committee members can ask questions thereafter.

Mr. NUSSBAUM. Thank you, Mr. Chairman.

In early 1969 Mr. DeMarco, Frank DeMarco, who was a partner of Herbert Kalmbach, one of the attorneys who handled the President's tax returns, Mr. Kalmbach's firm, in other words, replaced the Nixon, Mudge Rose firm in New York as the President's attorneys with respect to his returns.

On March 20, 1969, the 1968 papers, the gift of the 1968 papers was delivered to the Archives in Washington, D.C. Now, these are the papers, as you will recollect, that were picked up on December 30, 1968, and taken to a Federal record center in New York.

On March 20, 1969, they went from New York to the Archives in Washington and were placed in a room there, a room called 14-W for Walter.

Now, the President also had a large amount of papers which had not been given to the Government. As you understand, the 1968 gift was a selection of a portion of those pre-Presidential papers. Those papers were moved initially from New York to the Executive Office Building in Washington. And without going into a great amount of

detail because it is all in the Joint Committee report, there were discussions in March 1969 between members of the White House and people at the Archives.

We do know that on March 26 and 27, all the President's pre-Presidential papers which had not been previously deeded in 1968 were delivered to the Archives and placed also in a separate room, a room different, or a section different from the room in which the 1968 papers were placed.

Now, the Joint Committee staff concludes—and when I talk about the Joint Committee, of course, I am talking about the Joint Committee on Internal Revenue Taxation—concludes that they believe that this transaction was for the purposes of storage so that the people in the Archives could work on the papers. It is the position of the White House in this regard that the delivery of the papers on March 26 and 27 constituted the making of the gift which was eventually deducted under the 1969 tax return.

Now, all the facts here again are contained in the Joint Committee report, and I do not plan at this particular point to go over each particular memorandum and letter, but I think it is safe to say, and I do not think anyone contests this point, I think this is uncontradicted that no one at the White House told anyone at the Archives or anyone at the General Services Administration that a gift was being made on March 27, 1969, when the papers were delivered to the Archives.

The Archives claims, and you will see this when you read the Joint Committee report, that the papers were delivered at their request, and they initially, the White House requested that the Archives people work on the papers, sort them and select them at the Executive Office Building. The Archives people, after beginning this process, felt that they did not have enough room there and requested the papers come and be stored at the Archives, where it would be much easier to work on them.

Mr. WIGGINS. Mr. Chairman? Counsel, who are you talking about when you say White House at this point?

Mr. NUSSBAUM. I am talking about the White House. Mr. Morgan and Mr. Stewart, Edward Morgan who is a deputy counsel to the President, who was on Mr. Ehrlichman's staff and Mr. Stewart.

Mr. WIGGINS. In both cases when you referred to the White House, now you are talking about Ed Morgan and Mr. Stewart?

Mr. NUSSBAUM. That is correct. That is correct.

In any event, the papers were delivered on March 26 and March 27, 1969, and by papers, I am talking about the pre-Presidential papers which were not deeded to the Government in 1968.

Now, on April 8, 1969, Ralph Newman, who was an appraiser, does come into the Archives, and he does do an appraisal of the 1968 papers. Now again, so I can be clear, by 1968 papers, I mean those papers which were deeded and delivered at the end of 1968.

Now, he has to do the appraisal at this point because the income tax return for 1968 shortly has to be filed. It is not necessary to do an appraisal until that return is filed. And Mr. Newman does come in on April 8, 1968, does go into the Archives and does do an appraisal of the 1968 papers, and eventually they are valued at approximately \$80,000.

Mr. COHEN. You mean 1969?

Mr. NUSSBAUM. I'm sorry, April 8, 1969. Yes.

Now, initially Mr. Newman stated to the Internal Revenue Service and to the Joint Committee staff that in April 1969, he also viewed the 1969 papers to determine, to see if there was a sufficient amount of papers to make a gift of approximately \$500,000. Subsequent to those statements by Mr. Newman, the people at the Archives, Sherrod East, who accompanied Mr. Newman in April 1969, stated that Mr. Newman never viewed the 1968 papers in April 1969.

Subsequent to that, subsequent to those statements by the people at the Archives, Sherrod East, Mr. Newman reviewed his records, and by this time had retained an attorney, and discussed the matter with his attorney, and in looking at his records determined that he was incorrect when he said that in April 1969 he viewed the 1969 papers. He said he never viewed the 1969 papers in April 1969. All he did, as the Archives said, was view the 1968 papers on April 8, 1969.

Initially Mr. Newman had stated that he believed that he was first contacted by Frank DeMarco in April of 1969 and asked to look at the 1969 papers, and he believed that to be true. Later, after looking at this records, as I indicated, he realized, he found certain correspondence, which we will refer to later on, and he realized that first contact with Mr. DeMarco, Mr. Newman's first contact with Mr. DeMarco did not come in April 1969, but came in the end of October 1969. And he knew that he did not look at the 1969 papers until after he had talked with Mr. DeMarco.

So, consequently, his present statements to this committee as well as to the Joint Committee and to the IRS is that the first time he viewed he looked at the 1969 papers when they were in the Archives was in November 1969 and not in April 1969. But, in April 1969, as I indicated, he did look at the 1968 papers, did appraise them, and that appraisal was in part of the tax return which was filed by the President in April 1969 for the tax year 1968.

Mr. SMITH. Mr. Nussbaum, you speak of the 1968 papers and the 1969 papers. Now, what you are talking about are the papers delivered in 1968 and the papers delivered in 1969 and claimed as a deduction, is that correct?

Mr. NUSSBAUM. By the 1968 papers I mean the papers which were given as a gift to the United States in 1968, and the 1969 papers, I mean the papers which it was claimed on the President's tax returns were given as a gift to the United States in 1969.

Mr. SMITH. And they were all pre-Presidential papers?

Mr. NUSSBAUM. They are all pre-Presidential papers, that is correct.

Now, let me turn, as I indicated I am not taking every single thing in the report, just trying to touch on certain of the more important things, but on April 21, 1969, that date is another significant date.

On that date, according to Frank DeMarco, and according to Edward Morgan, a deed was signed in California by Mr. Morgan on behalf of the President in which Mr. Morgan deeded on behalf of the President, or the President deeded through Mr. Morgan as his agent approximately \$500,000 of pre-Presidential papers to the United States, these papers having previously been delivered to the Archives on March 26 and March 27, 1969.



Now, DeMarco says such a deed was signed. Morgan says that the deed was signed.

Now, in order to just elaborate a bit on this story, DeMarco first, when he was first interviewed by the Joint Committee did not recollect such a deed being signed. Later, when he sent a written statement to the Joint Committee, he did state that he recalled that Mr. Morgan did sign such a deed in 1969, on April 21, 1969.

Mr. DeMarco's secretary has testified before the California secretary of state, and has submitted an affidavit which states that she recalls typing a deed for the President in 1969. Mr. Morgan has stated that he recalls signing a deed on April 21, 1969. Now, this deed is apparently no longer in existence, and no one other than the people who have testified with respect to it have seen this deed.

The deed was destroyed, and I will get into that a little bit later on when I deal with the re-execution in 1970.

The deed was kept, as I indicated, by Mr. DeMarco. It was never given to the Archives. And as I indicated also, it was destroyed, except for one portion which Mr. DeMarco says was not destroyed, and that portion is in existence, and that is listed on page A-187. As you can see, that is entitled "Schedule to a Chattel Deed" dated March 27, 1969. Mr. DeMarco has testified or has stated that when Mr. Morgan came out to California, one of the purposes being to sign a deed of papers, that he thought that Mr. Morgan would bring with him a schedule of papers which were to be given as a gift in 1969. When Mr. Morgan arrived in California Mr. DeMarco had stated Mr. Morgan did not have such a schedule. Thus, Mr. DeMarco said he sat down and he had typed this schedule A which you are now looking at at page A-187. Mr. McKeithen reminds me that Mr. DeMarco that he had typed this himself, this particular schedule himself. And this schedule was attached then to the deed which Mr. Morgan is said to have executed on April 21, 1969.

The deed itself, along with the schedule, was kept by Mr. Morgan. Excuse me, it was kept by Mr. DeMarco, not by Mr. Morgan, by Mr. DeMarco in his personal custody. As I indicated, it was never given to anyone, never given to the Archives.

It was later destroyed, but this schedule A was not destroyed according to Mr. DeMarco, and he, to my knowledge—Mr. McKeithen interviewed him and another member of our staff—does not know why this was saved and the deed was destroyed.

Now, I should also indicate to the committee that the California secretary of state, which recently prosecuted a case against Mr. DeMarco in the sense that they wanted to take away his notary, and Mr. DeMarco ultimately, on June 17, resigned his notary, his position as a notary public in California, so the proceedings ended on June 17. But, the California secretary of state indicated to us or representatives of his office indicated to us that they had some question as to whether or not this particular schedule A was typed in 1969 when Mr. DeMarco said it was typed. They are in the process of examining this typewritten document against the typewriters or against samples from the typewriters which Mr. DeMarco had in his office in 1969. They did not complete that process because in order to conclude it it required additional documents from Mr. DeMarco, and those documents were subpoenaed for the notary hearing which was scheduled

to be held on June 17 of this year, a couple of days ago. When Mr. DeMarco resigned his commission it was no longer necessary to produce those documents in response to that subpoena, and consequently they were not able to complete their typewriter examination with respect to the schedule A. And as far as we know, there has been no completed typewriter examination of this particular schedule A.

Mr. COHEN. Mr. Chairman, could I inquire on one point, whether we have any documents as to Mr. Morgan, what authority he had to sign the deed for the President? Did he have that?

Mr. NUSSBAUM. Well, we discuss with Mr. Morgan what authority he had to sign the deed. We asked him. He does not recall anyone giving him authority to sign the deed. Mr. Morgan's story is that basically he was relying on Mr. DeMarco with respect to this matter because he had been told that DeMarco was now representing the President and was the President's tax attorney. Mr. Morgan stated that in 1968, at the end of 1968 he was asked to help Mr. Ritzel with respect to making the 1968 gifts and consequently in 1968 he thought he could rely on Mr. DeMarco with respect to this. He does not state anyone specifically gave him authority to execute the deed which he signed, or which he says he signed on April 21, 1969, which conveyed approximately \$500,000 worth of papers to the United States.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Why don't we continue with the presentation and we will defer the questions. It is only going to take a few more minutes.

Mr. NUSSBAUM. I should say also, Mr. Chairman, not only Mr. Morgan states he signed the deed on April 21, 1969, but there has been an interview with Mr. Morgan's secretary. We have not interviewed her but she has been interviewed by the other bodies investigating this matter and she states that she recollects Mr. Morgan did go out to the west coast in 1969 to, she thinks, sign the deed. Mr. McKeithen says that Mr. Morgan's secretary, to his knowledge, has not stated this fact directly to the investigating body but she has stated this to Mr. Morgan's attorney, Mr. Van Dusen, in Detroit, and he in turn has conveyed it to the different investigating bodies with respect to this matter.

In May of 1969, subsequent to the execution of this April 21, 1969, deed, Mr. DeMarco states that he had a conversation with Mr. Blech, who was the President's accountant, and he asked Mr. Blech, the way he described it, he said if a gift had been made of \$500,000 for how long or for how many years can you carry over that gift for income tax purposes. He wanted to know for how many years the carryover would be good if a taxpayer, he posed a hypothetical question to Mr. Blech and he said if a taxpayer had given a gift worth \$500,000 he wanted to know for how many years the carryover would be good. After doing the calculations, Mr. Blech asked who the donor was and DeMarco replied that it was the President. This is in May 1969. Blech told our staff, as he told the joint committee, that he made notes of this conversation and that he dated those notes and kept those notes subsequent to the conversation, but at the present time he could not find those notes of that conversation. So, he did not produce any notes but he does recall having such a conversation with Mr. DeMarco in May 1969 and Mr. DeMarco also recalls that conversation.

Now, in June and July 1969 we have two memorandums which were written by Mr. Ehrlichman to Mr. Morgan and a memorandum written by Mr. Barth who was the Assistant to the Commissioner of the Internal Revenue Service to Mr. Morgan. Those memorandums are referred to on the bottom of page 8 of our report. And you will see as we said there on June 16 Ehrlichman wrote two memorandums to Morgan which posed a number of tax questions relating to the President's taxes. In one of them he asked "Will you please have someone carefully check his salary withholding to see if it takes into account the fact that he will be making a full 30-percent charitable deduction." Now, Morgan apparently referred the question to IRS Commissioner Randolph Thrower, and they were answered by a memorandum dated July 16, 1969, from Mr. Barth, Assistant to Commissioner Thrower, to Mr. Morgan.

Now, no mention, as our report indicates, is made in either of these memorandums that the President had made a gift of papers in March 1969 of \$500,000. Now, the committee members do not have copies of these memorandums before them but when we supply, for example, the memorandum from Mr. Ritzel to the President we can also supply copies of these memorandums.

Mr. WIGGINS. Well I do not understand, counsel. Why in the world would Ehrlichman be concerned about taking the full charitable deduction if there had not been at least some contemplations of a gift of the maximum amount for those years?

Mr. NUSSBAUM. Well, Congressman—

Mr. WIGGINS. I only raise the question because you emphasize there was nothing said about it.

Mr. NUSSBAUM. There certainly was contemplations I guess that the President would make a maximum 30-percent charitable deduction for that year.

The question, or one of the questions for the committee was whether or not the President did make, on March 27, 1969, a gift not only for the maximum 30-percent charitable deduction for that year, but for 4 succeeding years and all I am stating is that in the memorandum to which I'm referring there is no mention made of such a gift covering not only 1969 but subsequent years. I am not stating anything else other than that fact.

Mr. WALDIE. Mr. Chairman, did in fact the return of the President take into account a full 30-percent charitable, the withholding of the President take into account the full 30-percent charitable deduction?

Mr. McKEITHEN. Withholding from the income tax payer never takes into account any contemplated deductions.

Mr. WALDIE. Was that the substance of the Barth memorandum?

Mr. McKEITHEN. That is correct.

Mr. NUSSBAUM. In November 1969 Mr. Newman returned to the Archives. As I indicated previously, he had been there in April 1969 at which time he appraised the 1968 papers and his appraisal was made part of the 1968 tax return. But, in November 1969 he returned to the Archives and he began doing a preliminary appraisal of the Archives.

On November 7, Mr. Newman wrote a letter to Mr. DeMarco and the letter is on A-263 of the joint committee report. In that letter Mr.



DeMarco encloses two copies of an estimate of the appraised value of the President's pre-Presidential papers currently stored at the Archives and a total value that Mr. Newman placed on them was \$2,012,000.

And then he writes in the second paragraph:

You understand, of course, that this is just an estimate based on an examination done under extreme pressure and in a very short period of time.

It is, however, accurate enough to enable the President to make a determination as to the disposition of the material.

At the same time that Mr. Newman sent this preliminary appraisal of \$2 million and some odd to Mr. DeMarco, he also sent a copy of the appraisal to the President.

Mr. BUTLER. Counsel, what was the status of the legislation on November 7, 1969? Had it been actually passed at that time?

Mr. NUSSBAUM. Yes. The House passed the legislation on August 7, 1969. The effective date—the House—

Mr. BUTLER. Now, what date did the Senate pass it?

Mr. NUSSBAUM. I am going to get to that in a second. The Senate passed it on December 11, 1969. The effective date in the House legislation, and by effective date I mean the effective cutoff date, as Mr. Doar indicated earlier, on the House legislation that you cannot make a gift of papers any more, would have been December 31, 1969. In other words, the end of the year which we are dealing with now. So as of that moment in time, November, if you assume that the House bill would become law, then you still could make a gift of papers in 1969. The Senate bill, which passed on December 11, 1969, with an effective date, as Mr. Doar also indicated, of December 31, 1968, a year back, so you could no longer make a gift in 1969.

Mr. BUTLER. All right. Thank you very much. I think you have answered my question.

Mr. SARBANES. Can you carry it through? What was it after December 11? When was the conference, or is that coming later?

Mr. NUSSBAUM. It was going to come later but I can deal with it right now. On December 22, 1969, the conference report was issued and recommended an effective date for the elimination of the charitable deduction for gifts of papers to be July 25, 1969. This effective date was adopted by both Houses of Congress on that same day, December 22, 1969, and the President signed the bill into law on December 30, 1969. What I am reading from now, for the members of the committee, is on page 10 of our report which discusses, starting with the second full paragraph, which discusses the passage of the legislation and how it became a part of the law. As you can see, I would just go a little bit more in detail, as you can see, Newman started working in the Archives on November 3, and then he continued working in November. He worked on November 3 and he worked from November 17 through November 20 at the Archives.

On November 21, the Senate Finance Committee, as our second paragraph on page 10 of our report indicates, the Senate Finance Committee reported out its version of the Tax Reform Act recommending that the charitable deduction for the gift of papers be eliminated effective December 31, 1968. So, the bill first came out of a congressional committee, a Senate committee, after Newman began working in the Archives in November 1969.

Now, as I indicated, Newman also sent a copy of this preliminary appraisal to the President earlier in November 1969, this preliminary appraisal of \$2 million and some odd. Up to this point in time Newman had never met the President, to our knowledge. But, on November 16, Newman was in Washington, and the story I am now telling you is a story that Newman told me and Mr. McKeithen when we interviewed him. Newman was in Washington as a tourist and as a guest and he had a friend who was a military aide at the White House. And that friend, according to Mr. Newman, invited him to a White House breakfast, a breakfast on Sunday, November 16. Mr. Newman and his wife attended that breakfast on November 16. They went to the receiving line and for the first time on a receiving line Mr. Newman met the President. He introduced himself to the President on the receiving line as the President's appraiser and he said, "Did you," and I am just giving you the substance. "Did you get my preliminary appraisal which I sent to you, sir?" And the President said "Yes," he received it and he sort of threw up his hands and sort of smiled and said "I didn't know they were worth that much." And Mr. Newman replied "Mr. President, that is basically a conservative estimate of the papers." And that is the conversation Mr. Newman recollects with the President, the first conversation with the President, and to my knowledge, his last conversation with the President on November 16, 1969.

Mr. MEZVINSKY. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. We are going to let Mr. Nussbaum finish his presentation.

Mr. MEZVINSKY. Well, the target as to the 1969 bill, can I just ask Mr. Nussbaum can you at all—

The CHAIRMAN. Well, you can defer the questions until later. I am sure that the presentation will be completed very shortly and I am sure the questions can hold.

Mr. MEZVINSKY. OK. Fine.

Mr. NUSSBAUM. As I indicated, Mr. Newman was in the Archives in November 1969. He prepared his preliminary appraisal, he sent it to the President, and he continued to work in the Archives after the preliminary appraisal from November 17 to November 20. He claims he really didn't hear from Mr. DeMarco much during this particular time.

On December 22, as I indicated, Congress passed a bill, both Houses passed a conference report eliminating a gift of papers effective July 25, 1969. Mr. Newman then recollects that on December 24, 1969, he had a telephone conversation with Mr. DeMarco. Mr. Newman's recollection of this is as follows:

Mr. Newman asked Mr. DeMarco if there was anything else to be done now in light of the fact that the Congress had passed the bill which apparently was going to be signed by the President, and which was signed on December 30, eliminating the possibility of making a gift of papers unless it was done by July 25, 1969. Mr. Newman recalls Mr. DeMarco telling him there was nothing more to do. Mr. DeMarco has no recollection of this conversation with Mr. Newman.

Now, Mr. Newman also stated to us he was the appraiser of the President's papers and we asked Mr. Newman if he knew at the end, as of the end of 1969 whether any gift of papers had been made by the President in 1969. He said he did not know of any such gift. He said

he did not know whether a gift had been made, he did not know whether a gift had not been made. No one had told him at the end of 1969 as to whether a gift was made.

We asked him what his impression was as the President's appraiser at the end of 1969, and as the report indicates, he said he thought that the President had not made a gift as of the end of 1969 and the words he used to us is: "I thought they had blown it." He said to us——

Mr. BUTLER. Mr. Chairman, the report you gave us says "I thought he had blown it" and my reading of it means he referred to Mr. DeMarco and not to the President. Now, which one was your intention here?

Mr. NUSSBAUM. I'm sorry. The report is accurate. "I thought he had blown it" is what Mr. Newman said to us.

Mr. SEIBERLING. Regular order, Mr. Chairman.

Mr. BUTLER. I think that is regular order. I think we ought to insist on some accuracy here.

Mr. NUSSBAUM. I'm sorry Congressman.

Mr. BUTLER. Well I am too.

Mr. NUSSBAUM. I was not looking down at the report. The words were "I thought he had blown it." And as I indicated, Mr. DeMarco does not recollect this December 24, telephone conversation at all with Mr. Newman.

Now, turning to 1970, to certain events in 1970, there are two memorandums which I would like to direct the committee's attention to in 1970. One was written on January 9, 1970, and it is contained at page A-265 of the joint committee report. And the other is written on February 2, 1970, and that is contained at page A-267 of the joint committee report.

The memorandum on page A-265 is from Mr. Rhodes who is the Archivist of the United States, to the Administrator of the General Service Administration. And it notes, if you look in the second paragraph, it says:

Foremost in importance was the expected donation of President Nixon of another increment in his pre-Presidential papers as a second installment to those deeded to the Government of the United States in December 1968. No such donation was made in December 1969, although we understand that all plans had been made for it.

The memorandum which is contained on page A-267, which is also a memorandum from the Archivist of the United States to the GSA Administrator, as you can see it says and I am reading from page A-267, exhibit I-34, a memorandum dated February 2, 1970, and the first paragraph says:

The following information is given for your use in a discussion with Mr. Bob Haldeman on Tuesday, February 3, concerning the development of a President Nixon Presidential Library.

And then it has a subdivision A, status of Nixon Papers, and under that 2, and it says:

We had expected a deed of gift from the President covering a second installment of papers before the end of the calendar year, but the Tax Reform Act apparently eliminated this.

The next document which I will direct the committee's attention to is a letter from Mr. Newman to Mr. DeMarco on page A-272. It is a



letter dated March 3, 1970, and as you will see the first paragraph says:

Now that we are in 1970, and you have had an opportunity to study the revised reform tax bill of 1969, I wonder what the procedure will be with reference to the Nixon papers and other material?

And then he goes on to say in the letter that—

Despite the bill, there are certain things that still would qualify as gifts, such as books, trophies, and other artifacts not covered by section 514 of the bill which relates to "papers."

The next event to which I would make reference occurs on March 27, 1970. On this date there is a telephone call from Mr. DeMarco to Mr. Newman. According to both Mr. DeMarco and Mr. Newman, Mr. DeMarco called Mr. Newman and told Mr. Newman that the President had made a gift of papers on March 27, 1969, a year earlier. Mr. Newman recalls Mr. DeMarco telling—and Mr. DeMarco does not recall this conversation specifically—Mr. Newman does recall it specifically and Mr. Newman says Mr. DeMarco said to him a gift of papers had been made by the President on March 27, 1969, when the papers were delivered to the Archives. And Mr. Newman says that Mr. DeMarco asked him for a description of the papers, for a description of papers worth around \$500,000. Mr. Newman says that he told Mr. DeMarco on the phone on March 27, 1970, that while he had examined papers in late 1969, November 1969, he had not at that point selected sufficient papers to constitute a gift of \$500,000 and that additional papers would have to be selected.

Following that telephone conversation, Mr. Newman called Mary Livingston, an employee of the Archives, and there was a call between Mr. Newman and Mrs. Livingston and asked her to select certain additional papers, to go to where the papers were stored, to select certain additional papers and to phone him back with a description of those papers. Now, this all takes place on March 27, 1970.

Mr. WALDIE. Mr. Chairman, there is an error in the staff memo on page 12.

Newman told the staff that in his March 27, 1969, letter, and it should be 1970, should it not?

Mr. NUSSBAUM. That is correct. It should be 1970. On page 12 of the staff memo there is an error.

Mr. JENNER. Third line from the top.

Mr. NUSSBAUM. No, it is the line of the first full paragraph. It says "Newman told the staff that in his March 27, 1969, letter" and it should be 1970 letter.

Now, I am about to get to that letter actually. Mrs. Livingston, after Mr. Newman's call, now Mr. Newman called Mrs. Livingston and asked her to select certain additional papers and to phone a description of the papers to him. Mrs. Livingston did go into the room where the papers were kept, did select certain additional papers and did call back Mr. Newman and did give him a description and a listing of those papers. In turn Mr. Newman, according to Mr. Newman's statement, phoned Mr. DeMarco, telephoned to Mr. DeMarco a listing of the papers which he had examined in November 1969, and which now included a portion of the papers or the papers selected on March 27, 1970, by Mrs. Livingston, and on that same day Mr. Newman wrote

a letter to Mrs. Livingston and that letter is at page A-273 of the Joint Committee report.

Now, that letter, as indicated, is dated March 27, 1970. It is from Mr. Newman to Mrs. Livingston and it states, as the committee can see, that Mr. Newman enclosed a description of the 1,176 boxes of manuscript material which were designated as a gift by Richard Milhous Nixon in 1969. And then he states that—

This is being done to be certain that my records corresponded with yours, and this material is being kept separated from the balance of the Nixon papers.

I have completed all my preliminary work on this material but will be returning soon to gather some detailed information I will be requiring. I shall advise you before coming East so that you can expect me.

Now, we asked Mr. Newman why he used the words in this letter "which were designated as a gift by Richard Milhous Nixon in 1969" and Mr. Newman told us that he wanted the letter to reflect what he had been told by Mr. DeMarco on that date and consequently included those words in the letter.

Now, on April 6, and I will try to speed along, on April 6 or April 7, 1970, Mr. Newman prepared and sent to Mr. DeMarco an appraisal document relating to the papers which were eventually taken as a gift of \$576,000. Now, Mr. Newman included along with his appraisal, the appraisal documents, included an affidavit by Mr. Newman and that affidavit is contained at page A-282 of the Joint Committee report.

And if you turn to page 282 you will see Mr. Newman states that he appraised the papers, and now I am talking about the 1969 gift papers. He says he appraised the papers from the 6th through the 8th day of April 1969 and on November 3, 1969, November 17 through November 20, 1969, and December 8, 1969.

Mr. Newman now acknowledges that this affidavit was incorrect, that the first time he ever saw the 1969 papers at the Archives was on November 3, 1969. He explains by the way, that the affidavit was incorrect because his secretary was the one who prepared the affidavit and she looked at his records, his travel records, and other records and she saw that he was at the Archives in April 1969 so she assumed that he was there on that date and he was looking at the 1969 papers, and so he hurried, signed the affidavit and sent it off. He says later on when he took a closer look at his travel records he realized that he was not at the Archives to look at the 1969 papers in April 1969, but only the 1968 papers. But, in any event, Mr. Newman did prepare that affidavit and sent it off to Mr. DeMarco, and that affidavit was included as a part of the tax return.

Now, on April 6, 1970, there was also a telephone call from Mr. Newman and Mrs. Livingston at the Archives. And like some other things here, there is also a different version to some extent of their telephone call. Mrs. Livingston is an archivist at the Archives, an employee and recalls Mr. Newman telling her that the March 27, 1970, letter which he sent here in which he said as you will recall, he said describing the papers which were "designated as a gift by Richard Milhous Nixon in 1969" Mr. Newman said to Mrs. Livingston, according to Mrs. Livingston, that the letter would be the only acknowledgement of a gift the Archives would receive with respect to those papers. Mr. Newman disputes that he said any such thing.

He said he would not say such a thing, he was not the tax lawyer for the President, and this is not something that he would say to Mrs. Livingston. He did not know anything about deed of gifts. That was Mr. DeMarco's job. Mrs. Livingston also states that in that conversation Mr. Newman, and I want to be precise, because I wasn't precise before and I should have been, Mrs. Livingston told the Joint Committee staff that Newman said "It would be better for everyone, including the White House, if all dealings on this point would stay between the two of us." We directed Mr. Newman's attention to this statement by Mrs. Livingston, that this is what he said to her and Mr. Newman told us that he may well have said what Mrs. Livingston said he said but he explained that he meant that the Archives should not make any public announcement of the President's gift. He said he felt that that was for the White House to make and that if he made such a statement, and he does not contest that he made such a statement, he only made it for the purposes that I have just indicated that he made it.

Now, on April 10, 1970, another deed of gift was signed with respect to the 1969 papers. It was executed by Mr. Morgan and it was notarized as being executed as of April 21, 1969. I refer you to page A-295 of the Joint Committee report which is a deed dated March 27, 1969, and it is signed as you can see on page 299 by Edward Morgan, deputy counsel to the President and notary, the notarization of which is contained on page A-300 which is signed by Frank DeMarco which indicates or states that it was executed on April 21, 1969.

Now, in fact, as Mr. DeMarco acknowledges and Mr. Morgan acknowledges, that deed was signed in Mr. Morgan's office on April 10, 1969. And the circumstances with respect—

Mr. SEIBERLING. 1970.

Mr. NUSSBAUM. I'm sorry—1970. The circumstances with respect to that deed are as follows. Mr. DeMarco says that after he received a new schedule, a complete schedule of the papers, the 1969 papers, after he received it in California from Mr. Newman, he saw that the schedule itself differed from the 1969 deed in the sense that the paper, the texture of the paper was different and the typing was different, and consequently he asked his secretary to type another deed, and his secretary has testified that she was asked to type such another deed to accord with the schedule, the new schedule which he had now received and she typed in his office. So taking the new deed which he had typed and the new schedule, he went to Washington, he went to Mr. Morgan's office and he asked Mr. Morgan to reexecute the document, which Mr. Morgan did. And that is Mr. DeMarco's statement.

Now, Mr. Morgan, when he first spoke about signing a deed, when he made a statement to the White House in August 1973, did not mention the reexecution of the deed on April 10, 1970. When he was interviewed by the Joint Committee, he acknowledged that the signature was his on that deed but he did not recollect reexecuting a deed. He only recollected one deed. But subsequent to that, and when he spoke to us, he spoke to our staff, he did recollect reexecuting a deed. He did recollect DeMarco asking him to reexecute something which he had previously signed. He doesn't remember when that happened. He doesn't remember on what day, but he remembers being called out of a meeting, he told us, coming to DeMarco, DeMarco telling him to reexecute some-



thing, reexecuting it and going back into the meeting. That is the statement Mr. Morgan made to us.

The CHAIRMAN. I think we will recess. There is a rollcall on an appropriation measure at this time, and we will recess until 2 o'clock.

Mr. HOGAN. May I ask a question?

Would it be possible to get these citations to the green book to track along with the report?

Mr. DOAR. Yes.

Mr. HOGAN. It would be very helpful to be able to have the page numbers.

The CHAIRMAN. And would the members kindly leave the books behind.

[Whereupon, at 12:27 p.m., the committee was recessed, to reconvene at 2 p.m., this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. Mr. Doar.

Mr. DOAR. There is a later report with respect to the Stanford Research Institute, the experts, that has been put on your desk. That should be filed in tab 99 [100]<sup>1</sup> of the book that was presented to you yesterday. This is a supplemental of somewhat a fuller report that Mr. St. Clair filed with the court on May 31. It should be made a part of the record.

Mr. NUSSBAUM. Members of the committee, when we recessed for lunch this morning, I had just finished telling about the reexecution of the deed on April 10, 1970, by Mr. Morgan. As you will recall, I said that the original deed which Mr. DeMarco says was signed on April 21, 1969, was kept with him, never sent to the Archives, and ultimately destroyed, destroyed after a deed was reexecuted on April 10, 1970.

Now, there is a story with respect to the reexecution of the deed which I want to bring to the attention of the members of the committee. These statements by Mr. DeMarco and Mr. —

Mr. LATTI. Mr. Chairman, a matter of clarification.

The CHAIRMAN. Mr. Latta.

Mr. LATTI. I seem to have lost my place. I cannot find where they destroyed that deed.

Mr. NUSSBAUM. Congressman Latta, Mr. DeMarco told us—Mr. McKeithen interviewed Mr. DeMarco, and Mr. DeMarco told us that he thinks the first deed was destroyed. He does not remember where it is at this particular point. His best memory is that the first deed was destroyed. That is Mr. DeMarco's statements to us in the course of that interview. No one has produced that first deed, and Mr. DeMarco states that after it was executed on April 21, 1969, he kept that deed in his possession. He does not have it now, he states. He states that he does not know where it is, and to his best recollection, it must have been destroyed after the new deed was typed and was executed on April 10, 1970.

What I am conveying to you is Mr. DeMarco's statements to us in the course of the interview conducted by our staff.

<sup>1</sup> The paragraphs of book IV were renumbered prior to publication. The numbers in brackets refer to the paragraph numbers in the printed volume.

The CHAIRMAN. I understand that was carried in the newspapers.

Mr. NUSSBAUM. In any event, I would like to direct the committee's attention with respect to the discussion of these deeds to page A-10 of the Joint Committee report is a letter sent—

The CHAIRMAN. Excuse me, what page?

Mr. NUSSBAUM. Page A-10 of the Joint Committee report.

This is a letter dated August 22, 1973. It is from Kalmbach, DeMarco, Knapp, and Chillingworth, signed by Frank DeMarco, Jr. It is addressed to Coopers & Lybrand in New York. At this time, Coopers & Lybrand was conducting a financial audit concerning the President. This letter was sent in connection with that audit. If you will look on page A-11, the last paragraph, Mr. DeMarco discusses the first deed. He says:

While in our opinion, the law is clear that an instrument of deed is not a necessary requisite to a gift of personal property, the duly appointed and constituted attorney in fact and agent of the taxpayer did on April 21, 1969, execute an instrument of gift reciting and declaring the intent of the donor to make such a gift; that said gift had in fact been made on March 27, 1969, and the subject matter thereof delivered to the National Archives.

In his letter, Mr. DeMarco does not mention any reexecution of a deed on April 10, 1970.

Similarly in August 1969, Mr. Morgan—sorry. Similarly, in August 1973, Mr. Morgan made a statement with respect to the execution of a deed. That is contained on page A-159 of the Joint Committee report. I ask the committee to turn to those pages.

Page A-159 is a statement or a memorandum to Mr. Douglas Parker, who is an attorney employed by the White House, from Edward L. Morgan. On page A-162, Mr. Morgan discusses events in 1969 and states:

"There is absolutely no question in my mind that I signed a deed of gift for the President at that time"—referring to the time indicated in the paragraph above; namely, Monday, April 21, 1969. "The thing that I do not remember is whether or not there was any particular schedule attached to the deed at that time, and if so, its contents."

Now, in this statement made by Mr. Morgan to Mr. Parker on August 14, 1973, Mr. Morgan also does not mention any reexecution of a deed.

Now, the way those statements came to be made, as we have gathered from our investigation, is as follows, and this we are relying a great deal on the joint committee, the investigation they made. After the joint committee began to examine the President's tax returns for the years 1969 to 1972—that is after December 8, 1973—in other words, 4 months after these particular statements were made by Mr. DeMarco and Mr. Morgan—somebody at the Archives examined the deed in the possession of the Archives. They noticed that the deed was a duplicate original—that is, it was a photostat of an original typed copy—the photostat itself having been signed containing Mr. Morgan's signature. It was a Xeroxed which was signed.

Attached to that signed photostat of the deed, a duplicate original, was a schedule listing the papers which were selected to be a part of the 1969 gift. That schedule was also a Xerox.

Now, the people at the Archives looked at the duplicate original, the Xerox which was signed, and looked at the schedule, and noticed from

the Xerox marks on the schedule and on the duplicate original that they had to be, that they were, in fact, Xeroxed at the same time. Now, we know and the Archives knew that that schedule which lists the President's 1969 gift could not have been prepared until March 27, 1970. It could not have been prepared until at least March 27, 1970, because all the papers which constitute the gift were not selected until that date.

As I indicated earlier, Mr. Newman had selected some of the papers in late 1969, November and December, but then when they received this call from Mr. DeMarco on March 27, 1970, he had additional papers selected by Mrs. Livingston at the Archives.

So schedule A to the deed which is now in possession of the Archives contains the papers selected by Mr. Newman at the end of 1969 and the papers selected by Mrs. Livingston on March 27, 1970. Consequently, since no one knew what the papers were that were to be selected by Mrs. Livingston, that schedule had to be prepared on March 27, 1970, or thereafter. Since that schedule—since the deed was Xeroxed apparently at the same time as the schedule, the deed could not have been prepared until March 27, 1970, and had to be signed thereafter. So the document in the Archives had, which was dated—by the document, I am talking about the deed, which was dated March 27, 1969, and which had a notarization which said it was signed on April 21, 1969—a notarization by DeMarco which said it was signed on April 21, 1969—clearly could not have been signed on April 21, 1969, that particular document. I am not talking about a prior deed, but that particular document. And that was brought to the attention of Mr. DeMarco and also subsequently of Mr. Morgan.

At that particular point in time, Mr. DeMarco did relate the facts as I have given them to you; namely, that on April 10, 1970—in other words, after March 27, 1970—on April 10, 1970, he did have a duplicate original prepared and he did have Mr. Morgan execute that duplicate original. And Mr. Morgan, as I have stated, while he initially stated he did not remember executing two deeds has ultimately told us that now he does recall executing something else, a deed which he previously signed, and he does recall executing that in—he does not remember the date, just sometime subsequent thereto.

Mr. SMITH. Mr. Nussbaum, why could not the deed now in possession of the Archives have been signed before March 27, 1970, even though the attachment might not have been in existence before March 27, 1970?

Mr. NUSSBAUM. Because it was Xeroxed at the same time—the Xerox marks on the same document which was signed—

Mr. SMITH. But are they separate pieces of paper?

Mr. NUSSBAUM. Yes—well, one is attached to the other, but—

Mr. SMITH. Why could you not Xerox an original deed made on April 29, 1969, and a later attachment made after March 27, 1970, at the same time.

Mr. NUSSBAUM. Because the deed itself is a Xerox. It is signed by Mr. Morgan. It was Xeroxed—the Xerox marks tell us that it was Xeroxed at the same time that the March 27—at the same time that the schedule to the deed was Xeroxed. That schedule could not have been prepared until March 27, 1970.



Mr. SARBANES. Is Morgan's signature——

Mr. SMITH. But why could not the original of that Xerox of the deed have been prepared before that time and held to be Xeroxed at the same time?

Mr. NUSSBAUM. Congressman Smith, the original could have been prepared before that time, but it had to be Xeroxed after March 27 and the Xerox is the copy which was signed.

So in other words, the person had to sign it after it was Xeroxed, since it had to be Xeroxed March 27, 1970, or thereafter; it had to be signed March 27, 1970, or thereafter. The original, the actual ribbon copy could have been prepared prior to March 27, 1970, but the Xerox of that original copy, which was signed by Mr. Morgan and which constitutes the deed which was given to the Archives, that could not have been signed prior to March 27, 1970.

Mr. SMITH. The Xerox itself is signed?

Mr. NUSSBAUM. That is correct.

Mr. SMITH. The signature is not a Xerox signature?

Mr. NUSSBAUM. No, it is a duplicate original. The actual deed now possessed by the Archives is a Xerox copy with an original ink signature.

Mr. DENNIS. Counsel?

Mr. NUSSBAUM. Yes.

Mr. DENNIS. I do not claim to know a lot about tax law, but is it not true, generally speaking, that a delivery with intent is all you need? Why do you need a deed at all to complete this gift? It seems to me that a general rule of law is if you deliver with intention, you have a completed gift. Now, the question would be the matter of intent, of course, but I am wondering why all the problem about a deed? You would not have to have a deed at all, I would not think.

Mr. DOAR. Maybe I could answer that, Congressman Dennis.

As I understand it, there is in some jurisdictions a provision for delivery of tangible personal property by transfer of property without any kind of deed. When the property was transferred or moved from the EOB to the Archives, there were about three times as many boxes of pre-Presidential papers as were actually included in the deed, in the gift. This was no segregation of those boxes at the time.

So in other words, just hypothetically, you can assume, we will say, that 450 boxes were removed from the White House or EOB to the Archives and that the ultimate gift involved only 150 of the boxes and there was no segregation of part of the total amount transferred. In that case, the question is for you to decide whether there was an intention to make that kind of a gift.

Mr. DENNIS. I would agree that would go to the question of intent. But it still would not answer the point that if the intent existed, you could have a completed gift by delivery plus the necessary intent without an instrument being executed.

Mr. MARAZITI. Mr. Chairman?

Mr. BUTLER. Mr. Chairman?

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Just following up that, I assume that the gift took place in the District of Columbia, and that the law of the District of

Columbia would govern. What is the law of the District of Columbia as to whether transfer of tangible personal property must be in writing or not?

Mr. McKEITHEN. Congressman, it seems to the staff that for the germane purposes of this inquiry, the local law does not have as much relevance as the law which is considered to be effective by the Internal Revenue Service; that is, when there is disputes as to the delivery of a gift or as to whether or not a gift has been made, they are usually raised by someone—either the donor or the donee. If a donor says he has not made a gift or a donee says that he disputes that claim, in that situation, the local law would govern. In this particular situation, it seems apparent that both the President may have wanted to give a gift—we do not know his state of mind as of 1969. Certainly the Archives is desirous of collecting the papers of Presidents and of other individuals. For purposes of the inquiry here, it seems to me, what matters is what the, who bears the burden in an inquiry before the Internal Revenue Service. In that situation, the burden is always upon the taxpayer.

Mr. BUTLER. Well, no, the inquiry is what is the law of Washington as to whether a transfer of tangible personal property must be in writing or not? I think the question does not come up between donor and donee. It comes up between creditors and donor and donee as a rule.

Mr. NUSSBAUM. The Joint Committee discusses this question raised by the Congressman on page 25. "Is a deed necessary for a gift" is discussed on pages 25 and 26 of the Joint Committee report. A couple of points are made there by the Joint Committee, which I will just summarize quickly.

One, with respect to General Services Administration procedures when it receives gifts, their procedures normally contemplate the use of deeds to make gifts. With respect to the common law, the Joint Committee notes:

It is clear that common law does not require gifts to be made by deeds. However he—

I am reading from the bottom of page 25—

If a gift is to be restricted in any way—as this gift was restricted ultimately—or if any rights are to be retained by the donor, some expressions of the restrictions must be conveyed to the donee before the gift is valid.

Mr. BUTLER. Thank you.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Just to add to what counsel has pointed out, the second paragraph on page 26 of the Joint Committee report also states some limitations regarding gifts when they are intended to be made by deed as opposed to being made otherwise. I think it would be helpful to indicate that where there is an intent to make a gift by deed, then the deed itself must be delivered, at least with respect to the Joint Committee's analysis.

Mr. NUSSBAUM. I just also want to reiterate one point which Mr. Doar just made also with respect to this gift, because I think I, myself, may not have been clear this morning when I spoke about the delivery of papers to the Archives on March 26 and March 27. A great many papers were delivered to the Archives on that day and placed in a

single room, a single section. Not all those papers have been given by the President to the Government. Only a portion of those papers were given by the President to the Government and as Mr. Doar indicated, some writing or some segregation or some selection was necessary in order to determine which papers were given to the Government and which papers were not given to the Government.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Thank you, Mr. Chairman.

Mr. Doar, I understand your response to Congressman Dennis that there might have been 450 boxes delivered and then a subsequent writing for a lesser number of boxes. But could not there be a construction placed on this act where 450 boxes are delivered to the Archives and that could constitute two things: One, the legal transfer of title, and second, with restrictions? In other words, what follows after what Mr. Morgan did and others did in an attempt to execute documents could not erase the passage of title and the legality of the gift if it were legally made to the Archives on March 26 and 27, 1969—whatever the dates are.

In other words, could we not construe that all the 450 boxes go in and attempt to cut it back later would be ineffective?

Mr. SEIBERLING. Mr. Chairman?

Mr. DOAR. Well, the question, as Congressman Dennis pointed out, is a question of intent and delivery. You have to look at all the circumstances to decide what the intent of the donor was. My only point was that where you had a great number of boxes of approximately \$2 million worth of property, there is no evidence that we have found in the record to the effect that the President, the taxpayer, intended to give \$450,000 or \$550,000.

So I suppose in answer to your question, a donor could give all 450 boxes if we wanted to, but there would have to be evidence that that is what he intended to do.

Mr. MARAZITI. Yes. I concur. Just to summarize, my position would be that the delivery of 450 boxes to a Government office, the Archives, would indicate a delivery in passage of time.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Without getting into the pros and cons of the substance of this issue, it seems to me we ought to bear in mind that the issue before this committee is a very different issue from the issue before the Joint Committee on Internal Revenue Taxation. Their commission was to determine whether the President should have paid more taxes or not. Our commission is to determine whether there was an effort to commit tax fraud here and whether the President was involved in it. That is an entirely different question which has nothing to do with whether or not he actually did succeed in making a completed gift.

Mr. MARAZITI. Mr. Chairman?

Mr. SANDMAN. Mr. Chairman? Would the gentleman yield on that point?

Mr. SEIBERLING. I will yield if I can.

The CHAIRMAN. Mr. Nussbaum, on what page of the report you have presented to us are you now?



Mr. NAUSSBAUM. I am on page 14 approximately.

The CHAIRMAN. Will you conclude the reading of the report?

Mr. NAUSSBAUM. I will, Mr. Chairman.

The CHAIRMAN. If there are any other data or facts that are addenda to this report, which I understand is a summary of the material in the report of the Joint Committee on Taxation, and interviews that you have conducted which are supported by these interviews, then we would expect you to relate them factually as such.

Mr. NUSSBAUM. I understand, sir.

The CHAIRMAN. OK.

Mr. NUSSBAUM. On April 10, the same day which Mr. DeMarco testified or stated that Mr. Morgan went to the President to sign the tax return, Mr. DeMarco stated he took the return to the President on April 10. Present with Mr. DeMarco at the time that he met with the President was Mr. Kalmbach, his law partner. They spent about an hour with the President. They discussed other matters, other than the tax return. Mr. DeMarco has informed us in his interview that he explained the major items on the return, including the gift of papers, to the President. According to Mr. DeMarco—I am at the bottom of page 15, now, the top of page 16.

According to Mr. DeMarco, he explained to the President the major items in the tax return aside from his salary; the nonrecognition of gain on the sale of his New York apartment, the deductions taken for interest, and he pointed to the appraisal by Mr. Newman, saying, "This, of course, is the appraisal supporting the deduction for the papers which you gave away."

The President's response, according to Mr. DeMarco, was, "That is fine."

Mr. DeMarco said to us that there was no discussion about the deed giving the papers to the United States. Mr. DeMarco told the President that the gift of papers would be a tax shelter for several years. Mr. DeMarco stated that there was no in-depth analysis of the tax return while he was with the President, but said that there was no question that the President knew he was getting a refund and that a basis for the refund was a deduction taken for the gift of papers.

The President, as the report indicates, signed a return in the presence of DeMarco and Kalmbach chatted again for a few minutes about other items, and then Mr. DeMarco informed the President that it would be necessary to have Mrs. Nixon sign the return. The President called Mrs. Nixon, told Mrs. Nixon that Mr. DeMarco and Mr. Kalmbach would be up to see her.

They went up to see her. She asked, "Where do I sign?" And she signed in the appropriate place. That is the circumstances of the signing of the return as conveyed to us by Mr. DeMarco.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. I am going to have Mr. Nussbaum complete this report and I am sure that the questions, if they are pertinent, I am sure that the questions will be appropriately answered and I am sure that it will not prejudice the response that you will get, nor will it prejudice the questioner if we wait until then.

Mr. WIGGINS. All right.

Mr. NUSSBAUM. After leaving Mrs. Nixon, Mr. DeMarco and Mr. Kalmbach went back to Mr. Morgan's office. Mr. Morgan, Mr. Barth,

who was an assistant to Mr. Thrower, and Clinton Walsh, the Chief of the Audit Section of IRS, were there to receive the President's return. Mr. Barth and Mr. Walsh looked over the return, saw that it was signed, put it back in its envelope, and left.

About 2 weeks later, Mr. DeMarco received a telephone call from Mr. Barth who said that the 1969 return had been checked and approved and that refund check was being issued that day.

Now, there was one other report that we are presenting to the committee. I can do that, I hope, fairly quickly. That concerns a sequence of events which occurred in 1973 and 1974 regarding the reopening of the President's tax returns.

Now, I should say first—it is best to begin that sequence with an event which is not contained in our report at this point. That is a letter which I will read to the committee dated June 1, 1973, to President and Mrs. Nixon. It is from William D. Walters, who is the District Director of the Internal Revenue Service in Baltimore, Md. This is 1973, June 1, 1973. The President had already filed his 1971 and 1972 tax returns. The letter states:

Dear President and Mrs. Nixon:

Our examination of your income tax returns for the year 1971 and 1972 reveal that they are correct. Accordingly, these returns are accepted as filed. I want to compliment you on the care shown in the preparation of the returns.

Thank you for the cooperation of your representatives.

"Sincerely yours, William D. Walters," who is District Director of the Internal Revenue Service.

Now, Donald Alexander became Commissioner of the Internal Revenue Service, I think he told us, about May or the end of May of 1973. During—what I am relating now is information which Commissioner Alexander gave us in the last week and a half, in a discussion that he had with me and Mr. McKeithen and Mr. Gekas of our staff. He said that after he became Commissioner, he saw stories in the paper about the gift of papers as well as other questions pertaining to the President's finances. And he read reports which purported to talk about the President's taxes—I mean reports outside the Internal Revenue Service. And the President discussed the matter at a press conference in November of 1973, discussed his taxes at a press conference, what deductions he took, what taxes he paid. This was of course after the story issued by the Providence Journal which indicated that in 2 years, the President paid a minimal amount of taxes.

Mr. Alexander told us that he determined sometime late in November 1973, on his own, that if information in this regard had come out with respect to any other taxpayer, that taxpayer's returns would probably be looked into. Consequently, he made the determination on his own, he said, to open another audit, to open an audit of the President's returns.

He stated to us that on November 28, 1973, he had a meeting with the Secretary of the Treasury, George Shultz. At that meeting, he informed Mr. Shultz that it was in the best interests of the IRS and the President for the Internal Revenue Service to open an audit of the President's returns. He emphasized to us that it was his decision, that it was not Mr. Shultz's decision, but he felt that since Mr. Shultz was his supervisor, he had to inform Mr. Shultz and he did inform Mr. Shultz.

He scribbled notes of that meeting after the meeting occurred. The notes were scribbled in sort of a dairy book. Those notes are contained in exhibit 1 to the report which the committee has in front of it now. I would direct the committee's attention to that exhibit, exhibit 1. You can see the notes and you can see our retyped portion of the notes.

As the notes say, Wednesday, November 28, 1973, they say "After staff at Treasury, I went to Secretary's office with Secretary and Ron Brooks, talked on three subjects—Bill Williams"—and then an item he crossed out before he gave us the notes—"and President's tax return. I said in best interests of IRS and President for us to audit. Said Judiciary Committee and Ways and Means (Joint Committee) about to go into this and force issue. Secretary said"—and there is something illegible—"go ahead, said he would talk General Haig. Said lawyers would cause downfall of government."

[Laughter.]

Mr. NUSSBAUM. Then there is additional material which is not pertinent here.

After the meeting with Secretary Shultz, which is conveyed in the notes I just read to you, Commissioner Alexander told us that he went back to his office and spoke to his staff with respect to reopening the President's returns and we in our report give a description of those meetings.

On December 7, 1973, a reopening memorandum was completed with respect to the President's returns. That reopening memorandum is exhibit 2 to the report which is in front of you. I direct your attention to exhibit 2, which explains, which gives the facts on page 2 of that exhibit as to why the returns, the President's returns should be reopened.

On page 2, I would direct your attention to the second paragraph which says:

A no change report was issued on June 1, 1973—

Let me just interrupt. That is the letter I just read to you—

But that we have now received information which leads us to believe that the taxpayer may not have made a completed gift of the papers prior to July 25, 1969, and would therefore not be allowed a deduction for this contribution of \$570,000. The deed used to transfer these documents may not have been forwarded to the National Archives until April 1970. The General Services Administration may have not signed the deed transferring title to the papers transported to the Archives in 1969. The documents which were selected to be donated to the Archives may not have been detailed until early 1970. **The deed was signed by a counsel to the taxpayer. The taxpayer did not sign the deed although his name was typed in the appropriate place in the deed for his signature.**

Then there is discussion about what the news media has been saying, as well as a short discussion of the law.

Commissioner Alexander told us that that same day, December 7, 1973, letters were sent to the White House telling the President and Mrs. Nixon that their returns for the years 1970, 1971, and 1972 would be reopened and would be examined. I direct the committee's attention to exhibit 3 to our report which contains those letters. Already two letters. Both these letters were hand-delivered to the White House on December 7, 1973. The first letter, as I indicated, refers to the returns for 1971 and 1972 and the second letter refers to the returns for 1970. The second letter, which refers to the 1970 return, asks for an exten-



sion of the statute of limitations with respect to that return. As I understand it, it is a normal process that such an extension was requested by the President and Mrs. Nixon in this particular case.

So on December 7, 1973, which is subsequent to discussions on November 28, as I previously indicated, these letters were handed to the White House.

According to Commissioner Alexander, that same day, December 7, 1973, the White House, someone at the White House, he does not know who, requested certified copies of the President's returns for the years in question.

That same evening, according to Commissioner Alexander, those returns were sent over to the White House.

On the next day, December 8, 1973, the President wrote to Chairman Wilbur Mills asking the Joint Committee on Internal Revenue Taxation to examine his tax returns for the years 1969 through 1972 in order to answer any questions which had been raised in the press concerning his personal finances as President.

This letter was made public. To our knowledge there was no announcement that on the day before, December 7, 1973, the President had been officially notified by the Internal Revenue Service that his tax returns would be audited. According to Commissioner Alexander, this did not become publicly known; namely, that the Internal Revenue Service was auditing the President's tax returns until early in January 1974 when an announcement was made by the Internal Revenue Service and the Joint Committee that they were conducting a joint audit. Also, to our knowledge, I do not think it has ever been publicly known as to when the President was officially notified that his tax returns would be audited. Now, this is again from Commissioner Alexander, this fact of the IRS investigation, and the audit investigation in December 1973 as I indicated.

The next document I would like to bring the committee's attention to is in the course of that investigation a referral report was composed by revenue agents of the IRS to the Intelligence Division of the Internal Revenue Service, and that referral report is No. 5, exhibit No. 5 to our report. This was a referral requesting a fraud investigation to be commenced by the Intelligence Division of the Internal Revenue Service with respect to three subjects. There are three separate reports, Frank DeMarco, Edward Morgan, and Ralph Newman. Those reports are dated February 4, 1974, as I indicated.

I think as the committee is aware, revenue agents or the audit division of the Internal Revenue Service is primarily concerned about determining tax liability if any. The Intelligence Division, one of their primary functions, is to look into whether any fraud was committed including criminal fraud and those reports were sent to the Intelligence Division on February 4, 1974.

There are a number of other exhibits also, and they will all be available for examination by the committee.

Exhibit No. 6 is documents from the files of the IRS which indicate that it was considered that a 50-percent fraud penalty be assessed against the President in connection with his audit but that penalty was rejected and the reasons for the rejection are given in this document entitled "Consideration of the Assertion of the 50-Percent Civil Fraud Penalty," which is item No. 6.

Mr. MARAZITI. Where are we?

Mr. NUSSBAUM. Item No. 6, tab 6.

What I am trying to do right now is to go down through the various tabs, hopefully in a prompt fashion. Tab 7 consists of a report by William Jackson who is in the Intelligence Division of the Internal Revenue Service to the District Director of the Internal Revenue. That report, which was dated March 28, 1974, is a recommendation that the fraud matter be referred to the grand jury. I will direct the committee's attention to the last page of that report which is page 8. I am talking about tab 7 now, page 8, the last page of the report drafted by Mr. Jackson. And I direct the committee's attention to the last two paragraphs.

As set forth in this memorandum, inconsistencies abound between the early testimony and subsequent testimony of Messrs. DeMarco, Newman, and Morgan. There are indications now that Mr. Kalmbach and Mr. Ehrlichman quite possibly were involved in the gift issue of the President, together with the preparation of the President's income tax returns for the year 1969. Because of these inconsistencies, and the reluctance of the various individuals to go under oath, in fact, to be interviewed, it is believed that the true story concerning the gift of the President's papers and the preparation of his 1969 income tax return can only be arrived at by the use of a grand jury proceeding.

It is recommended that a grand jury investigation of Frank DeMarco, Ralph Newman, Edward Morgan, John Ehrlichman, and Herbert Kalmbach be instituted with a view towards determining violations by them or any one of them for violation of section 7206(2) with respect to the 1969 income tax return of President Richard M. Nixon.

The next exhibit is a letter dated April 2, 1974, from Donald Alexander, the Commissioner of the Internal Revenue, to Leon Jaworski of the Office of the Special Prosecutor. And basically what Commissioner Alexander does in this letter is convey to Mr. Jaworski the recommendation which he previously received on March 28; namely, that a grand jury investigation should commence with respect to Frank DeMarco, Ralph Newman, Edward Morgan, John Ehrlichman, and Herbert Kalmbach with respect to the charitable deduction for the gift of pre-Presidential papers to the National Archives. And as he notes in the letter:

We have been unable to complete the processing of this matter in view of the lack of cooperation of some of the witnesses and because of many inconsistencies in the testimony of individuals presented to the Service. The use of grand jury process should aid in determining all of the facts in this matter. It is our opinion that a grand jury investigation of this matter is warranted and because this investigation will involve Presidential appointees we believe it would be appropriate for it to be carried forward by your office.

That same day, April 2, 1974, the Internal Revenue Service sent a letter to the President which is contained in tab 9 of our report, and that letter notes that the audits of the President's returns for the years 1969, 1970, 1971, and 1972 were complete, have been completed and I direct your attention, I will not read the whole thing, just the last paragraph, it notes:

With respect to your 1969 Federal Income Tax Return, the statutory period during which we can legally assess and enforce collection has expired. The enclosed report of examination of this year reflects our determination of what would have been due had the statute not expired. The report for the year 1969 is furnished for information purposes only. There is no legal obligation on your part to pay the deficiency shown.

Now, the deficiencies, if you turn to the last page of tab 9 you will see the deficiencies imposed by the Internal Revenue Service and penalties with respect to the years 1970, 1971, and 1972. You will see the figures, the amount of tax for 1970 is \$90,114.46.

Mr. DENNIS. Where is this one?

Mr. NUSSBAUM. The last page of the tab, and the penalties are \$4,505.72. For 1971, \$92,829.30, and a penalty of \$4,641.47. And in 1972, \$88,204.96 and a penalty of \$4,510.25. Now, this penalty under section 6653(a) is a 5-percent negligence penalty.

Now I ask you to turn to the next tab, where the IRS sent the President a list of income tax audit changes for the year 1969 and that is tab 10, and if you look at the bottom line, line 14, a statutory deficiency of \$148,080.97 and there was no legal obligation to pay that amount, no penalty with respect to that amount, was indicated thereon.

Now, the President received these documents on April 2, 1973. If you add up these figures—1974. Excuse me. I'm having trouble remembering the dates; 1974.

On April 3, 1974, the White House issued a statement that the President instructed payment of the entire amount of \$432,787.13 set forth by the Internal Revenue Service, plus interest. Those are the 3 years for 1970, 1971, and 1972 plus the \$148,000 some odd for 1969.

On April 17, 1974, the President and Mrs. Nixon paid \$284,766.66 for the years 1970, 1971, and 1972.

On June 19, 1974, which was yesterday, I was informed, the staff was informed by William E. Williams, Deputy Commissioner of the Internal Revenue Service, the President had not yet paid the 1969 deficiency of \$148,080.97 and no date had been set for such payment. Commissioner Williams also stated that the IRS had been in contact with representatives of the President and it is the impression of the IRS that the President is considering the payment of the 1969 deficiency.

That concludes my presentation.

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I have a series of questions and I will try to be relatively brief.

First of all, let me understand the last point. Is the last point that, in fact, the President has yet not paid \$169,000 plus that which is the deficiency for 1969? Is that a correct interpretation?

Mr. NUSSBAUM. The amount is not \$169,000. The amount is \$148,080.97. And according to Commissioner Williams, the President has not yet paid that amount.

Mr. MEZVINSKY. When was that due? What was the actual due date? When should that have been paid?

Mr. NUSSBAUM. It is not legally due. As I indicated when I read from the previous exhibit, the Internal Revenue Service—

Mr. MEZVINSKY. OK.

Mr. NUSSBAUM [continuing]. The Internal Revenue Service informed the President that it is not due.

Mr. MEZVINSKY. But he had indicated that he was going to pay it; is that right?

Mr. NUSSBAUM. That is correct. On April 3 the President issued a statement that he would pay that amount along with the earlier amounts.



Mr. MEZVINSKY. OK, now.

I also understand then—is this correct, that on December 8 when he indicated that he handed this over to the joint committee that he was on notice in writing on December 7, and that there was an oral presentation to Secretary Shultz on November 28 regarding the possibility that he would be reaudited; is that right?

Mr. NUSSBAUM. There was a meeting on November 28 in which Secretary Shultz said he informed General Haig and letters were hand delivered to the White House on December 7, 1973.

Mr. MEZVINSKY. Now, the first question we find is we see in the letters here from Mr. Alexander and from the grand jury on the fraud question, we see that the preparers of the return are being recommended for an investigation by the grand jury for fraud.

I see Mr. Kalmbach's name is mentioned and we see Mr. Ehrlichman's name is mentioned. Is there any comment from Mr. Alexander that, in fact, on a fraud matter and the possibility of fraud, why it was limited specifically to these individuals the preparers and not the President? Is there any comment at all on that?

Mr. NUSSBAUM. No.

The CHAIRMAN. Any comment if you know?

Mr. NUSSBAUM. No. Commissioner Alexander just said the Service determined that these names, the names that you have just read, should be forwarded for possible investigation by the grand jury.

Mr. FLOWERS. Would you yield?

Mr. MEZVINSKY. Yes. Can I finish? Go ahead.

Mr. FLOWERS. There is a comment in the file that the Service found that the taxpayer didn't participate in the preparation of his return, he only signed it after 15 minutes discussion and that's in the report. I think that is pertinent.

Mr. MEZVINSKY. Right. Thank you.

I might say that it is somewhat unusual in a case of fraud—or maybe I should raise the question, is it unusual in a case of fraud that, in fact, you look at the preparers of the return rather than the one who signs the return?

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. I don't think—

Mr. McCLORY. Unless the gentlemen are appearing here at the request of the committee as an expert to answer questions of that nature it seems to me it is quite inappropriate in a presentation of statements of information which is what we are receiving now as I understand it.

Mr. MEZVINSKY. Was there a negligence payment assessed?

Mr. DOAR. There was a negligence penalty assessed.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Because we anticipated that there would be a number of questions with respect to procedures of the IRS and Justice Department with respect to the processing of tax returns where they were or were not forwarded for criminal prosecution, we retained Mr. Folsom as a consultant and if the committee members wish to ask any questions about procedures in connection therewith or any other matters we think that he is the most appropriate person to give the professional advice on that. It is Mr. Fred Folsom right next to Mr. Nussbaum.

The CHAIRMAN. Has Mr. Folsom been identified to the committee?

Mr. DOAR. Yes, I did identify him for the members of the committee at the beginning of the hearing this morning. He is a member of the Colorado bar and a retired attorney from the Department of Justice. He worked in the Tax Division and other divisions of the Department since 1949 until his retirement and he was head of the Fraud Section of the Tax Division of the Department of Justice and he has had a lot of experience with the ordinary and regular procedures that were followed with respect to taxpayers through the years.

Mr. MEZVINSKY. Mr. Chairman, can I follow that, if we have an expert here? What are the normal procedures on a fraud matter as we have in front of us where we have a recommendation to the grand jury regarding the preparers of the return? Can you give us the normal procedures for any other taxpayer that would be caught in a situation that may come under a question as to fraud?

Mr. FOLSOM. If I can——

Mr. MEZVINSKY. We have an expert here and I would be interested in knowing how an expert would handle the procedures as to a possible fraud action.

The CHAIRMAN. I think this information would be helpful for the committee. He is qualified in background to relate what the experience has been in these matters and the committee members may consider it or not as they see fit. But, I think it is pertinent for just informational purposes. I do not think that it goes to deciding any issue.

Mr. DENNIS. Mr. Chairman, I quite agree with the chairman. I think it is pertinent and proper to ask the procedures. What I object to, if we were in a forum where you could object, is the gentleman's conclusions that somebody has been caught in a fraud situation.

He seems to be judging the question before he gets the answer. That's all.

The CHAIRMAN. Well, I——

Mr. MEZVINSKY. I don't care to be characterized as prejudging. I would like the procedures used for any ordinary taxpayer that may find himself receiving a notice from the Commissioner of IRS concerning possible deficiencies.

Mr. FOLSOM. I think I can help the Congressman with an answer to that.

If an investigation proceeds to the point where the taxpayer is exonerated and it is clear that the fraud in his return or the falsities in his return are either a responsibility——

Mr. MEZVINSKY. We cannot hear.

Mr. FOLSOM. If an investigation proceeds to the point where the taxpayer is not shown to be culpable, but his tax preparers are, it is not unusual to refer the case of the tax preparers to the Department of Justice for prosecution under section 7206(2) of the revenue code.

Mr. SANDMAN. Mr. Chairman. Can I explore that question?

Mr. MEZVINSKY. I just have one more question and then I will be glad to defer to the gentleman.

We see here that there has been difficulty interviewing or talking to individuals that may have knowledge regarding this particular item in the preparation of this return, and that the IRS has had difficulty interviewing them. Can you tell me what methods you have, supposedly, if a person refuses to give you information regarding a par-

ticular matter that is under investigation? Do you have to bring it to a grand jury in order to question the whole area of fraud?

Mr. FOLSOM. The Internal Revenue Service has available to it the summons procedure and they can serve a summons on a witness and compel his attendance and compel his testimony by resort to the district court to enforce that summons.

Mr. MEZVINSKY. Was that done in this case?

Mr. FOLSOM. It does not appear to have been done in this case.

Mr. MEZVINSKY. Do we know the reasons why it was not done?

Mr. FOLSOM. I think if I may hazard a guess it was a matter of the extreme haste with which the investigation was conducted.

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. First may I ask a question of Mr. Nussbaum. On your exhibit No. 6 you have got a memorandum of the IRS. It seems to be pretty conclusive as to what we are trying to find here as to whether or not fraud exists. Who prepared that memorandum, do you know?

Mr. NUSSBAUM. No, sir, we do not know. This memorandum was found by us when we went through the IRS files and we took this memorandum and made a copy of it and placed it in the book. We do not know who prepared it.

Mr. SANDMAN. Is it an official IRS memorandum? Do you know that?

Mr. NUSSBAUM. It is from the files of the IRS. There is also, I should state—

Mr. SANDMAN. Do you have anything to identify the date when it was made?

Mr. NUSSBAUM. No; we do not.

Mr. SANDMAN. Do you know whether or not it was made prior to the time they requested a grand jury?

Mr. NUSSBAUM. No; we have no idea of the date this was made.

Mr. SANDMAN. The thing that I am interested in here, someone prepared a memorandum from IRS who obviously had some authority or we would not have it before us today. In that particular memorandum, and it should be read into the record, the IRS says, "It is obvious that the taxpayer desired to make a gift of his Vice Presidential papers because of the financial benefit to him for tax purposes. This was legitimately accomplished by the taxpayer," et cetera.

All right, you can go further than that. You can take in every one of these points that are listed in this particular memorandum. I think that it is awfully important to find out who made this memorandum, especially what point in time. If this was official and done by the Department, it is inconceivable to me how the same department could recommend that this go before the grand jury, because none of this says that there is any guilt on the part of the taxpayer.

Mr. RAILSBACK. Would the gentleman yield?

Mr. SANDMAN. Now, can somebody here explore that?

Mr. NUSSBAUM. Yes. I think we can make an effort, Congressman Sandman, to check who drafted this and when it was done.

Let me just tell the committee so that the committee understands, we only received IRS files fairly late. A week ago today was when we first had access to the IRS files and we have been looking at the files and even at this point we did not have access to all of the IRS files. Additional files were then sent to us when we requested them.



For example, we didn't have access initially to the intelligence files concerning the fraud investigation. Subsequently we were given access to those files.

Mr. SANDMAN. This one does have to do with the fraud investigation and the thing that gets me is that the final sentence having to do with fraud says, "There is no information available linking the taxpayer with the actual preparation of this return."

Now, in view of that how can anybody recommend that this be serious enough to go to a grand jury for fraud?

The CHAIRMAN. That was not recommended.

Mr. SANDMAN. Somebody recommended that it go to the grand jury. Who did that?

Mr. FOLSOM. Mr. Congressman, it was recommended that not the case of the taxpayer go to the grand jury, but the taxpayer's preparers or advisers.

Mr. RAILSBACK. Mr. Chairman?

Mr. FOLSOM. DeMarco, Morgan, and Newman.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I wonder, Mr. Nussbaum, if you can tell us the difference between civil fraud and criminal fraud?

Mr. NUSSBAUM. I will leave that to Mr. Folsom.

Mr. FOLSOM. The difference is fairly ephemeral, but in terms of it it is really one in terms of proof.

Mr. RAILSBACK. Penalties, too; is it not?

Mr. FOLSOM. It is in terms of penalties; yes. But, what constitutes criminal fraud and what constitutes civil fraud is generally the matter of the availability of proof beyond a reasonable doubt for the criminal fraud items and proof merely by a preponderance of the evidence for civil purposes.

Mr. RAILSBACK. Thank you.

May I ask Mr. Doar, or Mr. Nussbaum, or whoever has been working on this, it is my recollection that when the question of the possible fraud came up that Mr. DeMarco was interviewed. I know that our staff has interviewed him as well. But, there were newspaper accounts that Mr. DeMarco seemed to feel very emphatically that the President had not done anything wrong and furthermore that he had advised him to do what he did. Did you get that same kind of response when you interviewed DeMarco?

Mr. McKEITHEN. Mr. Railsback, when I talked with DeMarco, he said that he thought that the President had not done anything wrong. But, as to the second part of your question, he expressed no opinion.

Mr. RAILSBACK. Didn't he actually indicate to you, or did he indicate to you that he still thought that some of the deductions disallowed were improperly disallowed? That is my recollection as well that they still feel aggrieved about the deductions that have been made from a legal standpoint.

Mr. McKEITHEN. Both Mr. DeMarco—Mr. DeMarco stated to me that he thought that a number of the deductions which were disallowed could be contested in court.

Mr. RAILSBACK. Thank you.

Mr. RANGEL. Mr. Chairman?

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I would like to just ask the Internal Revenue Service gentleman one question. Aside from the voluntary payment which the President may or may not make, which I understand is not assessed, but he said he was going to make, and is the President's income tax case closed insofar as the President and Mrs. Nixon are concerned?

Mr. FOLSOM. From the documents that we have, it is closed in the Revenue Service. If it is ultimately determined that there was fraud in the return, and the taxpayer was involved in the fraud, no statute of limitations ever runs on that return.

Mr. McCLORY. But as far as the present status in the Internal Revenue Service; it is a closed case?

Mr. NUSSBAUM. Well, let me—

Mr. McCLORY. I am asking him.

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Directing your attention to tab 6, I will ask the Internal Revenue Service person is there any way to know for certain that this memorandum before us is an item that is kept in the regular order of business of the IRS?

Mr. FOLSOM. It is impossible to tell from this document in tab 6.

Mr. RANGEL. Yes. You could not identify it as an official Government document?

Mr. FOLSOM. I would not recognize it as such because it does not have what I would consider the normal covering sheet over it.

Mr. RANGEL. To follow Mr. Sandman's line of questioning, I would ask counsel, this page looks as though there was a staple in the upper left hand corner, and it is identified by handwriting as being three in a circle which I don't know what it means, the third page, and in trying to find the chain of possession, could you tell the committee whether you received the original memo in this fashion and were there attached pages to it? Is there anything we can determine as to whether or not this has been written by someone who was in fact employed, or has been employed by the IRS?

Mr. NUSSBAUM. Mr. Gekas, who has been examining the files will answer that question.

Mr. GEKAS. Congressman, I know there was an original copy of this and they came out all together, they came all together in a package and they were identical to this and we took a page of them, eliminating duplicate copies, which gave no information as to source or author or date and we have copied them, so there is no other copy.

Mr. RANGEL. Why would they be included in our official record where there is no official classification as to this being a Department decision? In other words, it is not on the Government stationery, it is not signed, it is undated. I do not see why it would be in the book.

Mr. GEKAS. Well, it came from the IRS files and the agent who gave us these documents said that he is not familiar with who prepared it or what the circumstances of its preparation were.

Mr. RANGEL. So we do not have a legal opinion expressed in this memo. We do not know who wrote the memo? I just do not understand why it is included in this book when it is just something that was in a file.

Mr. NUSSBAUM. Congressman, the fact is that we found it, it was in the files of the IRS and it did indicate some considerations with respect

to the assertion of fraud penalties, and we felt since it was in the IRS files and since it did discuss this issue it should be in the book.

I should also say that we have the complete audit report. This does not. We are not purporting by these tabs and these exhibits to say that we are giving you every exhibit. We have just gotten the files, we have just started looking through the files, and there is an extensive group of files and we do not purport to have examined each paper, you know and the preparation had to be prepared for this particular time or at least a preliminary presentation.

And consequently we took those papers which we felt were pertinent. For example, the audit report contains a section which discusses the negligence, why the negligence penalty was asserted in this particular case, and it does discuss or deal with some of the considerations that have been raised here, for example. And it really lists the arguments basically why a negligence penalty was asserted in this particular case. And we have a copy of that which is not attached.

Mr. RANGEL. But that has been signed by somebody?

Mr. NUSSBAUM. That is right. That was a part of the official audit report and it discusses at least the views of the agents who drafted the audit report with regard to the President's role or knowledge or lack of knowledge with respect to that matter.

Mr. RANGEL. My point is no legal significance could be attached to this memo.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, the letter under tab 8 is dated April 2, and recommends a grand jury investigation by Mr. Jaworski's staff.

Do we know what response Mr. Jaworski has made to that?

Mr. DOAR. The investigation is underway. Some matters I think have been presented to the grand jury, some witnesses but the investigation is not completed.

Mr. SEIBERLING. Thank you.

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Could I inquire please as to this tab 2, the first page, the memorandum, and I see no reference or perhaps I have overlooked it to the year 1970. Is there a separate one for 1970?

I see that two items, the tax return and it looks like 1040, 1971, with an expiration date and I presume that means April 15, 1975 but do you have one for 1970? There wasn't one?

Mr. NUSSBAUM. No. There is not one for 1970 because it was not necessary; 1971 and 1972 have been previously audited, and no change letter, namely the letter dated June 1, 1973, had been sent to the President.

So, in order to do another audit of a return that had previously been audited you need a reopening memorandum. There had never been an audit of the 1970 return and there was no need for a reopening memorandum.

Mr. HUNGATE. Now, as I understood you earlier, there is no statute of limitations on fraud, you can come in 25 years later?

Mr. FOLSOM. Technically, yes. That is correct.

Mr. HUNGATE. But now I see in tab 3 the item I think page 2, the letter dated December 7, 1973, the second paragraph, where they are seeking to have them sign what I would call a suicide note to extend the time to audit them.



This is, I take it that is a very customary practice?

Mr. NUSSEBAUM. That is correct.

Mr. HUNGATE. It would have to have been done in this case because of the previous audit of the return and the letter?

Mr. DOAR. No, because of the 3-year statute of limitations on the collection of deficiencies.

Mr. DOAR. Regardless of fraud.

Mr. NUSSEBAUM. If fraud were found, Congressman, it would not be necessary to have the waiver of the statute but this is just the beginning and you are not sure whether or not fraud is going to come out.

Mr. HUNGATE. In the case such as the 1970 case where they had an audit and whatever kind of a letter you mentioned, then they do, I guess it's 1971, they had had for this year a previous audit, and there is a statute of limitations then if you have once been audited, is that true?

Mr. FOLSOM. There is a civil statute of limitations on civil deficiencies, but for fraud deficiencies there is no statute of limitations no matter how many audits there are.

Mr. HUNGATE. None. All right. Thank you.

Mr. FOLSOM. In short, you can cover up for two, three, four audits and on the fifth somebody drops a load on you and you are liable for the tax.

Mr. HUNGATE. Finally, tab 6, page 2, item H, Mr. DeMarco's secretary testified she remembered typing two deeds and so on and is that a fairly significant factor?

Apparently she actually did type two deeds. Do we agree to that?

Mr. NUSSEBAUM. That is her testimony. Her testimony is that she remembers typing two deeds.

Mr. MEZVINSKY. Would the gentleman yield?

Mr. HUNGATE. I yield to the gentleman from Iowa.

Mr. MEZVINSKY. You mentioned in the DeMarco hearing, because he agreed to have his notary seal removed, that they could not check the typewriters to see whether or not it was actually typed in 1969. What are we doing now to check whether or not the typewriters in Mr. DeMarco's office, as to the type on this deed, coincide, and did in fact, exist in 1969 since he supposedly stopped the hearing?

Did we pursue that so in fact we can get authentication regarding the typewriters and when it was typed?

Mr. McKEITHEN. Congressman, we have been in touch with the office of the secretary of state of California. They have notified us that an examination of one type sample in 1969 has been made by the office to the attorney general of California. They have not received a written report from that office.

They have assured us that if and when they receive a written report they will forward that and any other documents which they have turned up in their investigation to the committee staff.

Mr. HUNGATE. Counsel, did the Nixons in fact sign the consent form 872 sought for the taxable year 1970? Does anyone know?

Mr. McKEITHEN. Yes, they have.

Mr. HUNGATE. Thank you.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, three very quick questions.

Counsel, under the code, what is the authority of the Government to impose a negligence penalty?

Mr. NUSSBAUM. Well, all we know is a negligence penalty was imposed pursuant to section 6653(a), and there was imposed the 5-percent negligence penalty which was imposed and the audit report contains a 3-page statement why that penalty was imposed.

Mr. WIGGINS. I am interested in knowing from you what the code says about the circumstances under which it may be imposed.

Mr. NUSSBAUM. 6653(a), section 6653, subsection (a) says "If any part of any underpayment as defined in subsection (c)(1) of any tax imposed by subtitle A or by chapter 12 of subtitle B relating to income taxes and gift taxes is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5 percent of the underpayment."

That is the penalty, this 5-percent penalty which was imposed pursuant to the provisions of this section, and it was justified in the audit report.

Mr. WIGGINS. Thank you.

Now, that is point one. Now just very briefly, Mr. Chairman.

The CHAIRMAN. Mr. Wiggins still has the floor.

Mr. Wiggins.

Mr. WIGGINS. Throughout the entire book, there were photocopies of the Presidential logs for the month of April 1973. In that log, there is a notation of a meeting with DeMarco to sign the tax return for the taxable year 1974. I only call it to your attention and to the other members attention that it was a 3-minute entry and on the theory that practice and custom has some evidentiary value, it does indicate the time that the President spent with DeMarco in signing the return. That appears at least four places in our book and maybe more than that, as you have reproduced that document. I am sure you will acknowledge that.

Mr. DOAR. Yes, that is true.

Mr. WIGGINS. Now, finally, over to tax counsel again, if Richard Nixon should pay that tax which is barred by the statute of limitations, would that be a gift to the Government, and if so, would it expose him to further tax liability?

Mr. FOLSOM. Well, it would be a voluntary act on his part not called for by any legal compulsion at all at this stage.

Mr. WIGGINS. I am just asking you if you know the answer. Is it a gift in the contemplation of the law?

Mr. FOLSOM. I could not tell you.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I wonder if distinguished counsel would advise me if in their evaluation of the President's tax problems, they considered all the data in the document prepared by the Joint Committee on Internal Revenue.

Mr. DOAR. If we have or if we did?

Mr. BROOKS. I trust that you are.

Mr. DOAR. We are.

Mr. BROOKS. I particularly want to bring to your attention—I am sure you are aware of it; we have talked to you about it before—the gain on the Presidential New York residence, chapter 3, and the capital gain of some \$117,000 which was all established at San Clemente,

and the pattern of signing these deeds was fascinating. It tracks very closely the pattern in the transfer or the alleged transfer of the documents and that Mr. DeMarco had a tendency in that same set of transactions to sign papers and then back date them, sign them and have a different date put on them. It follows that same pattern.

Also, in part 7, the expenditures of funds of the President at San Clemente and Key Biscayne reflected that the IRS did agree with the Joint Committee that some \$92,000 of Federal expenses were personal income to the President and assessed him taxes on those funds.

Now, I hope that the committee staff, and you have a lot of people there, would take a look at the Constitution and see where it reads "No further emoluments shall be provided to the President by the United States or the states thereof." I wonder if this \$92,000 which has been assessed as a personal income to the President upon which he is required to pay taxes is not emoluments to the President by the United States, a further emolument above his income as stated by the Constitution and by the laws providing for his salary. I would think that it might well be established that that is a direct violation of the constitutional prohibition against any further emolument.

I would hope that the committee staff, Mr. Chairman, would take a very close look at that and give us a report on that before we reach a conclusion on this specific tax problem.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Nussbaum, I asked earlier today whether or not there was any evidence of authority on the part of Mr. Morgan to sign on behalf of the President that deed and you said no. I refer your attention to page A-293—I am sorry, A-301—where there is an affidavit by Mr. Morgan indicating that he had such authority.

The question I ask of you, No. 1, when you are engaged in a transfer of personal property as opposed to real estate, is it necessary to have a power of attorney executed in order to make it a valid transfer? Would that be true under California law or would an affidavit such as filed here be sufficient? If you would furnish that information to me at some later time, I would like to have it.

Second, would you clarify for me the reason for the retyping of the original deed? As I recall it, you said something about the original deed did not conform in terms of the type of paper that it was on and that was the reason for the retyping?

Mr. NUSSBAUM. Yes. Mr. DeMarco said that the original deed was different than the new schedule because of the texture of the paper and the type style, type style of the deed as compared to the paper, and he felt that it should be consistent. Consequently, he had another deed typed.

Mr. COHEN. The only other question I have of the chairman is are we going to have the benefit of these various interviews that have been conducted and I assume placed on paper. Are we eventually going to see these?

Mr. DOAR. Yes, they are available for you, yes.

Mr. COHEN. At the headquarters?

The CHAIRMAN. All members have always been invited to review those documents. Those documents are available at all times.

Mr. WALDIE. Mr. Chairman?



The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Would you refer just a quick moment to exhibit 8, the letter from Donald Alexander to Jaworski? Has the staff interviewed all the individuals that Alexander refers to in that letter as to whom he has been unable to have any cooperation or information?

Mr. NUSSBAUM. The staff has not interviewed Mr. Ehrlichman.

Mr. WALDIE. Has there been a reason why you have not?

Mr. NUSSBAUM. Well, Mr. Ehrlichman is under indictment.

Mr. WALDIE. Well, I know that.

Mr. DOAR. We have not attempted to interview Mr. Ehrlichman as yet in connection with this matter.

Mr. WALDIE. Now, in terms of the other gentlemen, would your assessment of their response to you concur with that of Mr. Alexander? His assessment is: "We have been unable to complete the processing of this matter in view of the lack of cooperation of some of the witnesses and because of many inconsistencies in the testimony of individuals presented to the Service."

Is that a fair description of your experience with these gentlemen?

Mr. NUSSBAUM. We interviewed Mr. DeMarco, Mr. Newman, and Mr. Morgan, and they did consent to be interviewed to answer our questions.

Mr. WALDIE. I know. And then were you content with the responses to your questions? Were they telling you the truth, did you think?

Mr. NUSSBAUM. I do not think that is—let me put it this way: As Commissioner Alexander said and as the joint committee reports indicate, there are a number of inconsistencies in the testimony as between these people, and judgments will have to be made someday of people with respect to this matter, to resolving those inconsistencies, whether it be this group or the grand jury or anybody else.

Mr. WALDIE. OK. Two final questions. Have you had access to the special agent's report and related exhibits compiled during the investigation?

Mr. NUSSBAUM. Yes; we have.

Mr. WALDIE. And is the fruit of that exhibit or a report contained in our folders?

Mr. NUSSBAUM. No; we have the fruit in our offices, but it is not totally contained in the reports submitted to you.

Mr. WALDIE. Is it not contained because it is confidential and sensitive?

Mr. NUSSBAUM. What we have attempted to do is in drafting this report is in effect to give an interim or preliminary report with respect to the matters that we have looked at as of this date. The total material is available for members of the committee to look at.

Mr. WALDIE. Will we be able to find out what portions of it are under process for grand jury investigation?

Mr. NUSSBAUM. No portions of a report are in process—

Mr. WALDIE. I gather Mr. Doar said that Jaworski told him that some portions were being investigated for grand jury.

Mr. NUSSBAUM. Yes, as we understand from the Special Prosecutor, they are looking into the circumstances surrounding the gift of papers, Congressman Waldie.

The CHAIRMAN. The Chair recesses this committee until 10 o'clock tomorrow morning. This is a record vote, and I would just caution the members that the material that has been presented this afternoon, as you know—there are 10 documents—are internal documents which came from the IRS and they should be returned or left in the book. The report, however, is available to the members.

I should also caution the members that there were some items that were presented this afternoon in executive session that I think are sensitive items, and I would hope that they do not discuss this with members of the press.

[Whereupon, at 3:53 p.m., the committee recessed, to reconvene at 10 a.m., Friday, June 21, 1974.]





# IMPEACHMENT INQUIRY

## Executive Session

FRIDAY, JUNE 21, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:21 a.m. in room 2141, Rayburn House Office Building, Hon. Harold D. Donohue presiding.

Present: Representatives Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, Latta, and Rodino.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Bernard W. Nussbaum, senior associate special counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; R. L. Smith McKeithen, counsel; James B. F. Oliphant, counsel; George Rayborn, counsel; Hillary D. Rodham, counsel; Gary W. Sutton, counsel; William A. White, counsel; Robert McGraw, investigator; Fred G. Folsom, tax consultant; and Jonathan Flint, research assistant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

Mr. DONOHUE. The meeting will now be in order. The Chair will recognize Mr. Doar. Do you have any comments?

Mr. DOAR. Mr. Donohue, members of the committee, there were some members who had further questions with respect to the IRS and the President's income tax returns for the years 1969-73, and we are prepared to respond to the committee members about that this morning, prior to moving on to the next business.

Mr. DRINAN. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

Mr. DONOHUE. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, if we are on that, I have two points I would like to take up very briefly with the gentleman.

Mr. DONOHUE. You may proceed.

Mr. DENNIS. The first item, these points are fairly clear, but I want to be sure about them. First, in tab 9 of your book, which is the letter from Commissioner Alexander to the special prosecuting attorney saying that Mr. DeMarco, Mr. Newman, and Mr. Morgan and so on should be investigated by the grand jury for possible violation of section 7206(2) of the Code, if I am correct, that is a section which contends with those who willfully aid or assist in or procure counselor advice—this is tab 8. I am sorry, I said 9. If I confuse you, I am talking about the letter at tab 8 from Commissioner Alexander where he asked the grand jury to look into violations of section 7206(2) by the named individuals. Now, as I read that section, it applies to those who willfully aid, assist, procure counselor advice in the preparation or presentation of the return, whether or not such falsity or fraud, whether any material matters false and so on, whether or not such falsity is with the knowledge or the consent of the person authorized or required to present such return.

In other words, as I read it, that section deals completely and only with the preparer and not with the taxpayer himself. Is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. And in fact, 7206(1) above will deal with the taxpayer; right?

Mr. DOAR. That is correct.

Mr. DENNIS. OK. Now, one other question if I may. Turning over to the tab which shows the negligence deficiency or penalty, whatever tab that is, tab 9, the last page of tab 9, the 5-percent negligence penalty, if I understand it correctly, that is assessed under section 6653 where it says if any part of any underpayment is due to negligence or intentional disregard of rules or regulations, but without intent to defraud, the 5-percent penalty is applied; is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. And that is the one we are dealing with here?

Mr. DOAR. That is the one that was assessed.

Mr. DENNIS. That is right. That is what I mean.

Then the next section, B, which does deal with fraud, applies a 50-percent penalty; is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. I thank you.

Mr. DOAR. Mr. Chairman, could I make a statement because I think this might be helpful with respect to the questions. I was thinking after the presentation yesterday that committee members might consider that there may be three ways that they can think about this particular matter.

First, they can consider it as if the President were just an ordinary citizen like one of yourselves, or myself or Mr. Jenner, or anyone else, and consider the presentation as if it were strictly a question of whether or not there was evidence or sufficient evidence to support going forward with a criminal fraud case. That is one way you could look at it.

The second way to look at this matter or inquiry is whether or not there is any reason to believe that the President used his position as President wrongfully in connection with the audit of his income tax returns.

Now, to summarize the material, you recall yesterday the President got a complimentary letter from the IRS in 1972 saying that his 1971 and 1972 returns had been cleared, or he got the letter in 1973, and then later on in connection with this subsequent audit, there was no effort made as far as we can tell to interview the taxpayer. The IRS subpoenas were not used, as far as we could tell.

But, as far as we have been able to find, there has been no indication that the President used his position to bring this somewhat favorable treatment as a taxpayer about. And the inference at the moment seems to be that you may have had a situation where the IRS just had been in the habit of treating Presidents more favorably with respect to their tax returns than other taxpayers.

And then the third situation that you could have is whether or not the President failed to meet his responsibility to take care that the laws were faithfully executed in taking no action with respect to the preparers of his returns once the preparers of the returns, or it became clear that there was evidence, indeed substantial evidence that they had engaged in a plan and put it in operation in order to permit the President take an illegal and improper deduction.

Now, with respect to item No. 1, I think it would be helpful for the committee if Mr. Folsom, who is a reliable and impartial source, could advise the committee as to what the criteria would be, and what the factors would be, what factors would be taken into account in the ordinary case, an ordinary case by any taxpayer if these facts were presented for review. I do not suggest that Mr. Folsom express his opinion one way or the other, but I think the committee members are entitled to have the best judgment and the best professional advice on the criteria and the procedures that would be followed and have been followed with respect to this particular matter.

And I say that because I think I have a responsibility to say to you that in this particular matter of whether or not the matter has been resolved, there is some support for the suggestion that every other constitutional body has ducked the question. The Joint Committee ducked it, the IRS ducked it, and I am not saying there is positive proof of that, but there is enough that I think this question needs your attention and I owe it to you to say that, and I have after 6 months a great affection for this committee and for the House of Representatives, and I think that I owe it to you to say that I think this committee might well want to consider just for a few more minutes some of these questions about criteria and factors in connection with this deliberation.

Mr. RANGEL. Mr. Chairman?

Mr. DONOHUE. Would you hear from Mr. Folsom first?

Mr. MARAZITI. Mr. Chairman, may I make a request before we leave this particular subject?

Mr. DONOHUE. Why don't we hear from Mr. Folsom and then you may proceed.

Mr. FOLSOM. Gentlemen, very briefly, the ordinary criminal tax case of the ordinary taxpayer who is in trouble takes a course in the Internal Revenue Service of referral from the Audit Division, or from some outside source that arouses suspicion, it is referred to the Intelligence Division. A special agent is assigned to the case, a revenue agent is assigned to the case. There is a joint investigation conducted.



The special agent prepares a special agent's report, which is a detailed analysis of the investigation he has conducted, his conclusions and his recommendation. Then that report is reviewed by a regional counsel of the Revenue Service, and if it is approved for prosecution it is referred across the street to the Department of Justice where it lodges in the Criminal Section in the Tax Division of the Justice Department.

In that section it is assigned to a line attorney who is charged with determining if the evidence is sufficient to support the recommended charges, and to determine if that evidence would be likely to persuade a jury.

With that background, in this instance, there is no special agent's report. The report of the Joint Committee has to suffice for the most part as supplemented by the investigation of your staff to provide the basis for consideration. If this were being investigated or being considered by the Tax Division at the Justice Department, they would be looking at such matters as the evidence to establish that the papers gift was an untimely effort, and that it was falsely included on the tax return for 1969. And then, of course, if it was included wrongfully on the tax return for 1969, it was also included wrongfully as a carry forward item in 1970, 1971 and 1972.

The factors we would look to in that respect have been discussed at considerable length by Mr. Nussbaum yesterday, and I do not think it would serve any particular useful purpose to review them here. Suffice it to say that if Tax Division were considering this, we would be reasonably secure in concluding that the papers gift deduction was improperly included on the 1969 return.

Then we would be looking for proof of the taxpayer's complicity, his mens rea, willful intent to falsify his return. In this case you will readily recognize that this is a built-in reliance on counsel, reliance on others that insulates the taxpayer almost automatically from much of what was done in respect to the papers gift deduction.

However, we would be looking at other criteria. And one of the matters that you should bear in mind is that the law in this area says that it is impossible to look into a man's mind and tell precisely what is there, and what went through his mind at a given time, and you have to determine this from circumstances and extraneous facts and an occasional glimmer from the taxpayer himself. In this case the taxpayer has never been interviewed. This would be very unusual in a criminal tax case coming to the Department of Justice, because ordinarily the first thing the agent does after he gets the preliminary information that there is a possibility of fraud in the case is to go to the taxpayer. Much information is secured from the taxpayer, and generally a taxpayer is represented by counsel at interviews that are frequently quite extensive. There was no interview in this instance.

The Joint Committee sent a memorandum of questions to the President for response, and the best way to characterize it, I think, is this was ignored and no response was made. This would be a factor that in the case of the normal taxpayer the prosecutor would consider.

Then there would be facts such as the rather startling discovery by Mr. Nixon in November 1968 that there was available to him a magnificent tax shelter. This would be something that we would con-

sider. Within the space of 13 months, that tax shelter was destroyed by legislation, which the taxpayer himself signed, and with respect to which he made a TV and radio announcement in discussing in generalities, the features of the bill.

We would then look to the fact that in 1968 he prepared, he personally signed the papers gift deed for 1968. He was intimately concerned with his attorneys in determining the extent to which he could make a papers gift deduction in 1968.

Shortly after he became President, the matter of his tax planning for the future was under discussion. We have the memorandum from Mr. Ehrlichman to Mr. Morgan in which he endorses "good," and we would construe the purport of that memorandum to mean that a piecemeal sort of gift deduction was contemplated for 1969 in future years. I'm sorry, that was Ehrlichman to the President, endorsed by the President in his hand "good", and then his second endorsement with respect to a charitable foundation.

We have the Ehrlichman memorandum in June which concerns questions raised by the President or raised on behalf of the President and which does not seem to be at all concerned with papers gift deductions.

And after the fact of the return, we have a few bits and pieces of insight into the thinking of the taxpayer. In press conferences and in statement, public statements made at the time of his submission of his tax returns to the Joint Committee on Internal Revenue, the President referred to the manner in which he had been advised by President Johnson of the availability of the papers gift deduction, and he stated that he turned this matter over to his lawyers and assumed that they took care of it in proper style.

Now, I am paraphrasing, but when we prepare a prosecution memorandum in the Justice Department, paraphrasing is not unusual. You have to put down the gist of what is said for the purposes of getting it in compact form. In none of these statements did he refer to his 1968 performance in which he personally was involved. We would consider this a matter of great significance in that he appears to be, to us, appeared to be, and it is for you, of course, to consider what you think of this particular kind of evidence, he would be appearing to us to be attempting to strengthen the inference that he relied entirely on others when, in point of fact, he had personally participated in his 1968 transaction and in the 1968 research on the issue of the gift deduction.

Those are the few pieces of information that we have as to the taxpayer's idea about this particular tax return and this gift deduction in 1969. Given all of the circumstances of the preparation of this 1969 return, it is my judgment that the attorneys in the Tax Division would conclude, and the Tax Division would conclude that something further was required in the way of procedure to resolve this case. It might well be that it would be advisable to refer to the U.S. attorney for grand jury action to get the statements of witnesses under oath. None of these witnesses have been interviewed under oath in this instance.

There would be an offer to the taxpayer of a conference in the Tax Division at which point he or his counsel would come in and meet the allegations that had been raised with respect to their client. If no

satisfactory response was forthcoming, it would be my judgment that in the case of an ordinary taxpayer, on the facts as we know them in this instance, the case would be referred out for presentation to a grand jury for prosecution. That I take it, is really the function that you are performing, something akin to the function of the criminal section of the Tax Division in deciding on the facts that are before you in this instance.

Ms. HOLTZMAN. Mr. Chairman?

Mr. EDWARDS. Mr. Chairman?

Mr. DONOHUE. Mr. Maraziti.

Mr. MARAZITI. Thank you, Mr. Chairman.

I have no question, but I would like to make a request of Mr. Nussbaum, if he could check for me and the committee the situation, as I recall, I think the President attempted to retrieve his papers, and I remember some discussion that the National Archives or the GSA ruled that he could not receive a return of the papers because there had been a valid gift, a transfer to the National Archives. I wonder if you could procure from the National Archives or the GSA, whatever the authority is, that ruling?

What I am trying to determine is whether in their ruling and their decision they took the position that title passed March 25 or 26, 1969. I wonder if we could do that?

Mr. DOAR. We will do that.

Mr. DONOHUE. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman. Mr. Folsom?

Mr. FOLSOM. Yes, sir.

Mr. EDWARDS. Would any inference be drawn in the case—well, would any inference be drawn from the fact that on December 7, 1973, letters were hand delivered to the White House notifying the President that their Federal income tax for the years 1970, 1971, and 1972 would be reexamined, and yet on December 8, the President made a public announcement that he was referring his tax matters to the Joint Committee on Internal Revenue Taxation, and made a further public announcement that the Internal Revenue Service had examined his tax returns for those years, and that they had given him a complete clearance?

So he made the announcement, this public announcement, went on public television, and at the same time, the day before, he had received information that he was going to be reexamined, and yet he made no mention of that in the public announcement.

Mr. FOLSOM. Possibly an inference could be drawn that there was an attempt, a self-serving attempt to make it appear that all was right with his tax world. I am not at all sure that that would justify a conclusion that the contrary was true, and there was something wrong and he knew it.

Mr. EDWARDS. Thank you.

Mr. WIGGINS. Mr. Chairman?

Mr. DONOHUE. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Mr. Folsom, from your review of the procedures used by the IRS in the second audit, would you conclude that the procedure by which they handled the second audit was out of the ordinary and was unusual in terms of handling the tax fraud case from your experience?



Mr. FOLSOM. I would consider it such, and I further think that it was deliberately—I don't mean to use the word deliberately, purposefully made as quickly as possible.

Ms. HOLTZMAN. In your experience, have you ever seen a tax fraud case in which no attempt was made to interview the taxpayer? I know you said that it was unusual, but I want to know in your experience in the number of years that you have served in the Justice Department on this matter, have you ever seen a tax fraud case where the taxpayer, no attempt was made to interview the taxpayer?

Mr. FOLSOM. Yes; I have. And I do not want my response to carry any implications beyond what I have got to say. It simply is a frequent occurrence in the case of racketeers who are known to be surrounded by a cordon of lawyers who would not let them talk to anybody, any police authority.

Ms. HOLTZMAN. Mr. Chairman, I have not finished my question.

Mr. DONOHUE. You have one more question. Proceed.

Ms. HOLTZMAN. Well, I would like to ask this question of Mr. Doar and Mr. Nussbaum with respect to two other matters that I found puzzling or disturbing when I was reading the joint committee's report, and did not appear in the presentation here.

Namely, first the failure of the President to include royalty income in his 1969 through 1972 tax returns referred to on page 210 of the joint committee report, which income would have been taxable had it been included on the returns. And also the treatment, the inconsistent treatment of the face of the President's returns regarding the San Clemente property in which he first claims that there was no business use of the San Clemente property whatsoever for the purpose of non-recognition of capital gains from the sale of his New York apartment and the purchase of the San Clemente apartment, and then on the same tax return claims a 25-percent business deduction for San Clemente, even though on the return he had said that it was not a business purpose for the purpose of his sale of his New York apartment. I wonder if you could deal, I mean tell me, how you view these two matters, whether they would go into, say, Mr. Folsom's contemplation of a fraud case here, and how the IRS treated these matters?

Mr. DOAR. Well, we cannot answer the latter question of whether it would go into or would be a criterion to take into consideration by the Tax Division. We have looked into these questions carefully, and we can give you the answers to the first part of the question.

Mr. DONOHUE. Mr. Smith.

Ms. HOLTZMAN. Could I have the answer to my question?

Mr. DONOHUE. I thought you had but one question.

Ms. HOLTZMAN. I know. They are answering it.

Mr. DONOHUE. You may answer her question.

Mr. McKEITHEN. Ms. Holtzman, as to your first question, you are interested in the royalty income and the fact that the President did not report certain royalty income on his 1969 return which were assigned to foundations. This matter is dealt with by the joint committee on page 210, I believe of its report. Yes; that is correct, on page 210.

I have spoken with the joint committee about this matter. As you know, all income from whatever source derived the Internal Revenue Code says must be reported on income tax returns, and under section

61A(6) of the Internal Revenue Code of 1954, as amended, royalty income is specifically mentioned.

As to the effect of inclusion or noninclusion of royalty income on the tax return, the joint committee noted that some royalty income which the President had was assigned to charitable institutions or foundations, and that particular royalty income was not reported. The joint committee staff has advised me that the effect of not reporting that royalty income, aside from the issue of duty of a taxpayer to report all income on his income tax return, is that had the papers deduction from 1969 not have been disallowed; that is, if the papers deduction for 1969 is good or was deemed to be good, then his income tax would have been increased for that year. Since the Internal Revenue Service and the joint committee disallowed the 30-percent deduction for the most part in 1969, then the tax effect of reporting this royalty income was then assigned to a foundation would have resulted in a wash, but you are correct in stating that it is the duty of the taxpayer to report income.

Now, I might point out that the President did report certain royalty income on all of the years which are covered by the joint committee report. In 1969 on page A-693 of the joint committee report you will see he reported income of \$710.24. For 1970, on page A-718, he reported income of \$8,879.90. For 1971, on page A-735, you will see that he reported royalty income of \$367.05. And then on page A-759 you will see that for 1972 he reported royalty income of \$220.58.

Mr. WIGGINS. Mr. Chairman?

Mr. McKEITHEN. Now, if you want an answer to your second question dealing with the business use of his property as reported in the 1969 return, on page A-709 of the joint committee report you will see that the form which deals with nonrecognition of gain on a sale of a residence, there is a box checked on that page showing that both residences were not used for business purposes. We have been told in our interview with the President's accountant, Arthur Blech, two things that he was told by Mr. DeMarco, whom he understands in turn was told by the White House, to not recognize the gain on the sale of the New York apartment, and it would have the effect of causing him to check this no business use box, and he also told us that he received orders through Mr. DeMarco from the White House that he was to take a deduction for business use of the San Clemente property of 50 percent.

Blech told us that he, on his own initiative, reduced this business use deduction to 25 percent, but he explained to us that he filled out the one form, the nonrecognition of gain form, prior to the time that he considered the deduction of business use of the San Clemente property, and that apparently he never went back and checked the return to make sure that it was internally consistent.

Mr. DONOHUE. Thank you very much. Mr. Smith.

Mr. SMITH. Mr. Doar, Mr. Nussbaum, in regard to the gift of papers or the attempted gift of papers in 1969, has anybody talked to the preparers as to whether they had talked to the President?

Mr. NUSSBAUM. Yes. We interviewed Mr. DeMarco and Mr. Blech with respect to the return. And Mr. DeMarco stated that he did talk with the President with respect to the return, as we indicated yesterday in our report, the day the return was signed, on April 10, 1970. That

was the only discussion, to our knowledge, that Mr. DeMarco had with the taxpayer, President Nixon, with respect to the return.

Mr. Blech, it is our understanding the accountant who prepared the return never talked to the President with respect to the return.

Mr. SMITH. But in those——

Mr. DONOHUE. Mr. Drinan.

Mr. SMITH. There is no indication——

Mr. NUSSBAUM. I should say one other thing to be complete. Mr. Morgan, who was involved in the deduction of the gift of papers, as well as various other matters with respect to the return, informed us that he never spoke with the President with respect to the return.

Mr. DONOHUE. Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman. I have several questions, and I have talked to the counsel here earlier this morning, and I hope he will bring out what he indicated to me. I think the committee has a very difficult assignment unless we get a lot more information.

And back to tab 6, we have an unsigned, undated document which is the only thing that we have on the key question of the civil fraud penalty. And I have a lot of difficulties with that document, aside from the fact that we do not know who wrote it, who is responsible or at what time.

Counsel told me this was prepared after the joint committee indicated to the IRS that it was going to make the recommendation which it did.

But, I have a key question as to the third or fourth paragraph.

All of the above individuals had direct or indirect contacts in the preparation of the tax return and could possibly, under oath, or with a grant of immunity, connect the taxpayer with the preparation and, therefore, change our recommendation against the 50-percent criminal fraud penalties.

The obvious question arises, Why was this not done? This is referred to at the very last paragraph on page 2.

In summary, unless we have affirmative testimony by some or all of the individuals mentioned above, we cannot charge the fraud.

I wonder if Mr. Nussbaum would tell the committee about his conversation with Mr. Alexander last night.

Mr. NUSSBAUM. Well, subsequent to Congressman Rangel's question yesterday with respect to this document, we, after the hearing on yesterday, contacted the Internal Revenue Service to determine the precise origins of this document, which, as I indicated yesterday, was contained in the IRS files.

We learned by talking to various people at the IRS yesterday, including Mr. Alexander and others, that this document was prepared by a Robert Brown, who is the head of the intelligence section in the Baltimore district office. That is the section which investigates criminal tax fraud.

Mr. Brown prepared this document on approximately March 22, 1974. He then gave the document to a revenue agent, who is one of the revenue agents who did the audit of the President's tax returns, Mr. Calogero, Al Calogero. He gave that to Mr. Calogero on March 22, 1974, to give to Commissioner Alexander, to hand deliver it to Commissioner Alexander.

I personally spoke to Mr. Calogero yesterday, and Mr. Calogero informed me that he did personally hand deliver this document to



Commissioner Alexander. At the same time that he delivered that document to Commissioner Alexander he also delivered to Commissioner Alexander a memorandum for the record with respect to whether or not a negligence penalty should be asserted with regard to the tax return.

Now, we have distributed to each of the members, and you each have it on your desk right now, an envelope containing that "memorandum for the record" which concerns the negligence penalties. That is dated March 22, 1974. And if you will open the envelope you will see it.

Mr. DRINAN. Mr. Counsel—

Mr. NUSSBAUM. I would like to complete, I would like to complete, you know, the chronology of this thing so that you will have it all before you.

Mr. Calogero, on March 25, 1974, which was a Saturday, went to Commissioner Alexander's office and handed to the Commissioner both of these documents. One is the one concerning fraud penalties and the other is concerning the negligence penalty. The Commissioner himself does not remember receiving the documents, but he states that if, in fact, the people in the IRS stated they handed it to him on that day, he had no reason to dispute it, and obviously he says he probably did receive it at that particular point. The Commissioner also informed us that he made the decision to impose a negligence penalty and not impose a 50-percent fraud penalty. He said in making that decision he accepted the recommendation of his professional staff as reflected in part in these two documents or memorandums, as well as reflected in discussions which the Commissioner had with members of his professional staff during the last 2 weeks, and certainly the last week of March 1974.

That now conveys to the committee what we learned in essence from our various telephone calls to various people in the IRS yesterday.

Mr. DRINAN. I wonder if I may have two more questions, please?

Mr. DONOHUE. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman.

Mr. DRINAN. I will yield in a moment, Mr. Wiggins, if I may. Mr. Counsel, what is the ordinary procedure—

Mr. LATTA. Regular order.

Mr. DONOHUE. I have recognized Mr. Wiggins.

Mr. WIGGINS. Two very quick questions. I have a question first with respect to the royalty income. I have not seen the assignment, and I trust that the counsel or someone on the counsel staff has seen the assignment. But, I assume that it is an assignment in futuro of income to be generated from these books in the future; is that correct?

Mr. McKEITHEN. Mr. Wiggins, in the IRS audit report, dealing with royalty income, they state they have been told there is an assignment, but they were given to written documents of an assignment. So, we cannot answer that question.

Mr. WIGGINS. Would you assume for the purpose of your analysis that it is an assignment in futuro, or do you assume that it is an assignment of royalty income received by the President already?

Mr. McKEITHEN. Well, the IRS's analysis of this issue states that it is an assignment of income as it is received, not an assignment of income past received, if that is responsive to your question.

Mr. WIGGINS. Well, as I understood your response, I take it to be a typical in futuro assignment, and my problem is, and I am seeking your legal counsel here, is if a taxpayer transfers all of his right, title and interest in income in the future, does he receive that income in a taxable year as a matter of law, thereby requiring its inclusion on his tax return?

Mr. McKEITHAN. As a matter of law, or pardon me, as a matter of fact, the IRS found that the President did not assign all of his right, interest, and title in the royalty income to the foundation. They found that he assigned his interest only. Where the President has the right to receive income from this source, they found that he has the duty to report that income on his income tax return.

Mr. WIGGINS. I would agree with that analysis of the law, but that is a construction of the document of assignment, and if we are going to make an issue out of this, I would like then to see the assignment to make my own judgment as to whether IRS is correct.

Mr. McKEITHAN. If I may, may I read from the IRS audit report on this matter?

Mr. WIGGINS. Of course.

Mr. McKEITHAN [reading]:

No evidence was available during the examination to verify an assignment of the right, title and interest in the written work to the Richard Nixon Foundation. However, taxpayer's representative stated at a meeting held in Washington, D.C., on February 19, 1974, that such an assignment was made by document prepared by Frank DeMarco, Jr., but the documents could not be located. He will attempt to locate and submit such documents.

Mr. WIGGINS. Well then, we have really no evidence. It was the absence of evidence which caused the IRS to take the position that it did take. I think that is fair for IRS to do that, and the burden is on the taxpayer, but I want to be sure I understand the facts.

Mr. DONOHUE. Mr. Rangel.

Mr. RANGEL. Thank you.

Mr. Doar, we are caught in the position here of drawing inferences of guilt to the President of the United States based on what other people have done. I think it is really grossly unfair in dealing with the complexities of the income tax law for us to be placed in the position of having to infer that the taxpayer was guilty. I think all of us on this committee believe that we have a legal right to escape the paying of taxes as long as we are doing it legally, and if we assume that the President, as an ordinary taxpayer, had the same lack of knowledge of the law as anyone else, and did, in fact, rely on people, and it turns out they are wrongdoers, we have to first recognize that he is President of the United States, that investigators have to treat him as the President of the United States.

But the only way that we can determine whether fraud or criminal liability lies is for us to find out whether he participated in any wrongdoing. Now, if it is clear that as President he cannot be indicted, if it is clear that the Internal Revenue, for one reason or another, did not have a conference or an interview, but if it is clear that the President failed to respond to the joint committee questionnaire, why should we have to deal in the vacuum? Why don't we take the initiative, prepare the papers for the President, ask the President the questions, and go on and ask for these interviews, and they should be under oath.

I mean, all Mr. Nussbaum did in talking with all of these people, he has been without the benefit of the sanctity of the grand jury, and I think that the President should get the benefit of all doubt if all we have to do is infer wrongdoing because he relied on wrongdoers. And I hope that this committee, since the constitutional responsibility stops here, and it was not taken care of in the joint committee for reasons which they have said it was not, and it was not done by the Internal Revenue for reasons I don't understand, but do we have to guess whether the President knew? Are you preparing a questionnaire to ask the President whether he knew?

Mr. DOAR. Congressman Rangel, the joint committee did serve questions on the President, and they were not replied to.

Mr. RANGEL. Mr. Doar, it is not the joint committee's constitutional responsibility to investigate the President of the United States. The buck stops here, and I am saying that I refuse to infer any legal criminal liability to any taxpayer, including the President, if we don't ask the President for a conference, if we don't ask him the questions that could clear up this matter.

Mr. DOAR. Well, that is a matter for the committee to decide.

Mr. RANGEL. Well, I don't know whether it is or not. People are talking about inferences of fraud, inferences of crime. I just don't like this, especially with the income tax law, that we infer any wrongful conduct without us taking the initiative in cleaning it up. I will have to admit that if the President refuses to answer this committee's questions, then perhaps inference could be drawn.

Mr. DONOHUE. Mr. McClory.

Mr. McCLORY. Thank you.

Mr. Folsom, in my review of the joint committee's report, and the assessment of deficiencies, it seems to me that all of the questions have been resolved adversely to the President insofar as tax liability is concerned. And I know that he has assigned a waiver, one of the most, it seems to me, one of the most aggrievous resolutions adverse to the President is in the refusal of the Internal Revenue Service to recognize that he is entitled to have a home, and to defer a capital gains tax on the sale of his New York apartment and the purchase of a home for himself and his family in California.

What I would like to know is, what about the rights of the President? Has he waived all of his rights as far as any recouping of any of this tremendous tax liability, or does he still have some opportunities to go into the tax court or whatever?

Mr. FOLSOM. He has voluntarily paid the deficiencies for the open years.

Mr. McCLORY. And so has waived his rights?

Mr. FOLSOM. Yes, but he has not waived his rights with respect to 1969.

Mr. McCLORY. That is still open?

Mr. FOLSOM. That is barred by the statute of limitation, absent fraud.

Mr. McCLORY. That is the one, and there is no civil liability on it, that is the one he said he was voluntarily going to pay?

Mr. FOLSOM. The liability, as I understand it, continues forever, but there is no means to collect it after the statute has run.



Mr. McCLODY. I see. So that with respect to his rights of reviewing that in the tax court or whatever, he still——

Mr. FOLSOM. There is no way, no machinery, by which it can get before any forum.

Mr. McCLODY. So his rights are gone?

Mr. FOLSOM. Well, yes, I would say his rights are.

Mr. McCLODY. That is unless there is a private bill——

Mr. SARBANES. And the Government's rights.

Mr. FOLSOM. He could perchance sue for a refund.

Mr. DONOHUE. Mr. Seiberling.

Mr. SEIBERLING. Thank you, Mr. Chairman.

Mr. Folsom, I wonder if you could tell us to what extent the Internal Revenue Service would ordinarily in evaluating the fraud question take into consideration all of these other disallowed items, such as the failure to pay capital gains on the apartment in New York, and these various failures to report additions to San Clemente and the efforts to obtain very dubious deductions, et cetera?

Mr. FOLSOM. I would assume that highly trained Internal Revenue Service personnel would want to take into consideration the taxpayer's entire tax performance.

Mr. SEIBERLING. Would his——

Mr. FOLSOM. Certainly we would notify the Justice Department in determining whether there was an attempt to evade taxes.

Mr. SEIBERLING. Well, but does this have a bearing on the fraud question?

Mr. DONOHUE. The committee will recess for about 10 minutes until the members have an opportunity to answer the quorum call.

[Short recess.]

The CHAIRMAN. The committee will come to order.

Before I recognize any members. I would like first to have members indicate to me, those members, at least, who have not had an opportunity to interrogate or ask questions during this phase, indicate to me by raising their hands at this point. Who would like to ask questions?

Mr. Mezvinsky. I understand you have had an opportunity already.

Mr. Waldie, Mr. Brooks, Mr. Danielson, Mr. Sarbanes, Mr. Thornton, Mr. Hogan, Mr. Mayne, Mr. Latta, and Mr. Dennis.

Mr. DENNIS. Mr. Chairman, I did ask one question, but if you get around to me, I have another one.

The CHAIRMAN. And Ms. Holtzman.

Mr. DENNIS. And Ms. Holtzman asked one, too.

The CHAIRMAN. Ms. Holtzman, I understand you have already had an opportunity.

We are first going to allow an opportunity to just those members, and I suppose that is going to take, since there are——

The CLERK. There are 11 members, Mr. Chairman.

The CHAIRMAN. Well, we will allot 5 minutes to each of the members: 5 minutes for clarification on the part of those members, and I am allowing that 5 minutes among those other three members that want to ask clarifying questions.

That means that we will conclude the questioning on this phase by quarter to 1.

Mr. FLOWERS. They could take less than 5 minutes, though, Mr. Chairman?

The CHAIRMAN. They certainly can. I recognize Mr. Waldie.

Mr. WALDIE. Do I understand on exhibit 8 that section 206, subsection 2, deals only with wrongdoing on the part of preparers of the tax return but not of the taxpayer?

Mr. FOLSOM. That is what it was assigned for, yes, sir.

Mr. WALDIE. I cannot hear you.

Mr. FOLSOM. That is what the statute was designed for.

Mr. WALDIE. Was there any time during this investigation any focus on wrongdoing of the taxpayer?

Mr. FOLSOM. I would have to say that in my judgment, Mr. Congressman, the taxpayer was insulated from investigation except by the Joint Committee. The Joint Committee obviously was trying to get information.

Mr. WALDIE. Now, wait a minute. Why do you say he was insulated? Either by choice or by some other—

Mr. FOLSOM. By choice of the Internal Revenue Service, they do not appear to have sought an interview with the taxpayer.

Mr. WALDIE. Now, if the Internal Revenue Service had resorted to the device of subpoenas to the preparers of the tax return, would they have any privileges that they could assert in that process—well, let me rephrase the question.

Is there advantage to the preparers of the tax returns to have their matters referred to the grand jury? Will they be able to assert privileges in the grand jury proceedings that they could not assert in the IRS proceedings?

Mr. FOLSOM. If the IRS is pursuing them by summons, any process, there is no difference between grand jury appearance and an appearance pursuant to a summons with respect to the assertion of the fifth amendment privilege.

Mr. WALDIE. Then the last question: Can anyone on the staff tell me, was there any response or was a question even asked as to why these matters were referred to the grand jury or to the Special Prosecutor rather than an inquiry undertaken by summons and subpoena in the IRS itself?

Mr. NUSSBAUM. I think to the extent that there is an answer to that question, Congressman Waldie, it is contained in the letter from Commissioner Alexander to—

Mr. WALDIE. Well, I have read that letter and it does not seem to be an adequate answer. Is that the only answer?

Mr. NUSSBAUM. Yes.

Mr. WALDIE. Was any question ever asked of any of the parties by the staff or by Commissioner Alexander, or was it accepted that this was the sole response to that question, or was it even deemed that the question was not important?

Mr. NUSSBAUM. The question was asked by the staff.

Mr. WALDIE. What was the response and to whom was the question asked?

Mr. NUSSBAUM. The question was asked by me to people at the IRS as to why no effort was made to interview or to contact the taxpayer, the President. The answer given to me is that the IRS did what they thought was appropriate in this case.

Mr. WALDIE. All right. Was there a question asked as to why summons and subpoenas were not issued to the preparers of the return?

Mr. NUSSBAUM. That specific question was not asked by us, no. But we did discuss with them in general terms why this matter was referred to the Special Prosecutor in the manner in which it was referred. The answer that we were given fundamentally is that that is contained in the document which we have—both the March 28 report, which recommends the grand jury proceedings, and the April 2 letter to the Special Prosecutor, Congressman Waldie.

The CHAIRMAN. The time of the gentleman has expired. Mr. Mayne.

Mr. Mayne. Thank you, Mr. Chairman.

Mr. Doar, obviously, what Mr. Folsom has had to say here would be juicy grist for the leaker's mill. I am wondering if you consider that his testimony is subject to the rules of confidentiality.

Mr. DOAR. Oh, I have no question about it.

Mr. MAYNE. And you think it would be improper for us to discuss his interpretations of these things as they have been given to us this morning to the press?

Mr. DOAR. I think the question of propriety or impropriety would be for the committee to decide, not for me. But my understanding is that all of the statements here are subject to the rules of confidentiality.

Mr. MAYNE. I had understood from the chairman's remarks when we closed yesterday that we had completed the evidence on the Internal Revenue Service, the tax returns of the President, when the staff reported on this evidence that you have been accumulating now for many weeks. So I am somewhat perplexed, not only by the fact that this is being reopened at all this morning, but also by the very remarkable change in emphasis which the presentation has taken. I was impressed yesterday by the balanced presentation, the obvious effort to be objective and impartial as you made your presentation and Mr. Nussbaum made his. But today, there seems to be a completely different approach. We start off with your rather remarkable statement, which seemed to be almost an apology to the committee that you had not been tough enough on the President yesterday. Then that is followed by Mr. Folsom's very long statement, to which I listened carefully, and if there was anything in it that was not completely weighted against the President of the United States, I failed to hear it.

Now, it seems to me that certainly all of this information was available to the staff yesterday. We quit quite early, as I recall, about 4 o'clock. I would like to ask you, why have we had this drastic change in presentation and emphasis since yesterday?

Mr. DOAR. Well, I do not believe there has been a drastic change in presentation and evidence since yesterday. I did not understand that the presentation had been completed yesterday. As soon as the chairman had adjourned the meeting, there were a number of members of the committee that had questions to ask. Mr. Folsom was—we had always intended that Mr. Folsom would be here prepared to state the criteria, and factors that were to be taken into consideration by the members of the committee in making their decision and weighing the matters that were before the committee. I do not, I think we have a responsibility to present that material to you for what you think it is worth and that is what we are doing.



. Mr. MAYNE. Well, now you say that you were approached about some matters when we ended yesterday, and I must say it seemed to me, and I know to many members, that at the close of yesterday's proceedings, this tax specification was a dead duck. But then I understand there was a Democratic caucus. Can it be that you were urged there that this had to be brought back to life and built up and made into a real, all-out case against the President of the United States?

Mr. DOAR. Absolutely not. Absolutely not.

The CHAIRMAN. First of all, might I say to the gentleman that counsel has no authority to direct this committee in any way whatsoever. The presentation, the formal presentation had been completed yesterday and there were members who had not had an opportunity who were very interested and wanted to ask questions. This is certainly not unusual. I think it is in the interest of this committee to be properly advised and properly informed. I think that that is the responsibility of this committee, to get at the facts and to get to the truth of the matter.

The time of the gentleman, I am sorry to say, has already expired.

Mr. MAYNE. Well, inasmuch as the chairman had some of my time, may I just ask him this question, Mr. Chairman.

Is this morning's proceeding going to be made the basis of trying to reopen the entire matter of taxes and have our staff reengage in further weeks of investigation on this subject?

The CHAIRMAN. The presentation of the tax problem or the personal finances involving the President will be completed after this morning's session when the members have had this opportunity and those members have had an opportunity. Then the members will consider, and this will be a matter of consideration by the committee, as to what else they want to do. But it seems to me that this phase of the inquiry will have been completed at that time.

Mr. MAYNE. Thank you, Mr. Chairman.

Mr. McCLORY. Mr. Chairman?

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. I am recognizing Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I am one of those who feel very strongly that despite the statements that I have found very helpful this morning, we have revealed that the investigation in terms of those statements that have been taken that were not under oath, that there are a number of people who have never been interviewed, that in fact, this whole matter is naturally dumped into our collective laps and requires some further consideration by this committee as to how we are going to precisely proceed.

We were not able to take the notebooks out, so that no one, I do not suppose, has been able to read and digest this material. We have been told in the course of questions and answers with the staff and our experts that there have been very little sworn statements taken, which are not known to induce the truth unless some sort of safeguard is employed. Here we have IRS, we have the Joint Taxation Committee, all having dumped this question of some perhaps category of fraud on our laps and we are talking now about winding this up and moving speedily on. Well, as one who wants to move very quickly to a completion of this material, I would like to find out, if I can, in one place to be reported now or later, all the possible witnesses and what has

been done with them in terms of whether they were, A, attempted to be interviewed; B, whether they were interviewed under oath or not under oath; and third, whether we have any affidavits. And finally, what are our intentions about all of the witnesses that I think have not yet been contacted so that we can come to a clear conclusion on this matter?

Could I get a response, Mr. Doar, I presume, from you?

Mr. DOAR. Are we speaking about in the tax area?

Mr. CONYERS. Yes.

Mr. DOAR. We have not interviewed any of the witnesses under oath. We have interviewed Mr. Ritzel, Mr. DeMarco, Mr. Blech, Mr. Newman, and Mr. Morgan.

Mr. CONYERS. Well, in view of the fact that everyone has made clear to us that we are going to be called upon to flatly resolve the question of the President and his tax problems, how are we going to have a record that will wash regardless of what position this committee ultimately comes to if we have not done the kind of investigative job that will become the basis for at least an understandable conclusion?

It seems to me that some amount of research, Mr. Chairman, will probably have to go on, because those members that want to pursue this, even though we may not normally treat it in the committee, will still have to have this basic work done for us. There is no way that we can go out and indulge in this kind of investigation.

So I would like that to be carefully considered as we wind up on this matter today.

The CHAIRMAN. It will be. The gentleman has completed his questioning?

Mr. CONYERS. Yes, I have. I yield back the balance of my time.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. I yield my time.

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Folsom, I would like to ask a couple of questions. This is a rather simple one, but I am trying to get it clear in my own mind.

What is the legal responsibility that I or any other taxpayer assumes with respect to the return when he signs his name to it?

Let me just put the question that way and see if I can get an answer.

Mr. FOLSOM. The returns call for an honest response, fully setting forth the correct facts and subject to the penalties of perjury. In short, the taxpayer who subscribes to a return presumptively, and this is a rebuttable presumption, knows what is in it and his signature ascribes to the correctness of it.

Mr. SARBANES. Well, to what extent generally in the law can the taxpayer, with respect to matters in his return—well, on what basis insulate himself from the responsibility and place it on others?

Mr. FOLSOM. Well, there are criminal tax cases that do say that a man cannot purposely make himself in ignorance of the contents of a return and when it is found to be in error, disclaim any responsibility for it.

However, the other side of the coin is that many people do put reliance on their counsel and on their tax accountants and do not exercise the responsibility that they are supposed to exercise to assure themselves of the correctness of everything in it. If they do this in no more

than a negligent fashion, in good faith, without intending to cheat, they are not subject to criminal penalties.

Mr. SARBANES. Well, in the latter instance, is the burden, is the presumption that the taxpayer has knowledge and assumes responsibility for what is in the return, and if he wishes to advance that last argument, is the burden then upon him to show that that is the case? Or is the burden on the service to show that he has the knowledge?

Mr. FOLSOM. The burden remains with the Government, with the prosecution, to establish all of the facts with respect to a criminal tax case beyond a reasonable doubt. The burden can shift when the circumstances develop that the taxpayer knows or should have known the impropriety of something in his return. Then the burden falls on the defendant in a criminal tax case to make out his defense or he proceeds at his risk, at his peril.

Mr. SARBANES. Mr. Nussbaum, with respect to tab 7, are the exhibits that go with that report available?

Mr. NUSSBAUM. Yes.

Mr. SARBANES. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I reserve my right, Mr. Chairman.

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Chairman, for recognizing me. I appreciate this chance to ask a couple of questions, since I did not have the opportunity last night and I am glad that the subject matter is continuing into today.

I direct my attention to the colloquy of yesterday between my distinguished colleague, Mr. Wiggins, and staff relative to the statute of limitations.

The question was raised as to whether the collection of the 1969 deficiency of some \$148,000 could conceivably be considered a gift and thereby or a charitable deduction or something like that and thereby give the President an added benefit of some kind or other. It is not a fact that the statute of limitations which is set forth in title 26, section 6501(a), provides in pertinent part that except as otherwise provided in this section, amount of any tax imposed by this title shall be assessed within 3 years after the return was filed and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

That is a quote, eliminating irrelevant portions.

Is it not a fact that this statute of limitations does not extinguish the debt but merely limits the period of time in which the Internal Revenue Service may commence a proceeding in court for the purpose of collecting the tax?

Mr. NUSSBAUM. That is my understanding.

Mr. DANIELSON. Apropos of that, is it not a fact that title 26 in section 6501(c) provides for a waiver of the defense of statute of limitations? The statute of limitations—

Mr. NUSSBAUM. Yes, the statute of limitations normally can be waived.

Mr. DANIELSON. It can be waived?

Mr. NUSSBAUM. Yes.

Mr. DANIELSON. Which normally implies that it is simply a defense and not an extinguishment of the debt itself.



I direct our attention to the decision of the Second Circuit Court of Appeals, *United States v. Gayne*, 137 F. 2d 522, which points out that the waiver is not even a contract but essentially a voluntary, unilateral waiver of defense by the taxpayer, and as such needs no more consideration than does the acknowledgment of a debt in order to revive it after the statute has barred it.

Mr. NUSSEBAUM. In this matter, Congressman, I spoke yesterday on the telephone to Commissioner Alexander, in part with respect to the memorandum which we have already discussed but in part with respect to this matter also. The Commissioner informed me that he understands from his Deputy Commissioner, Commissioner Williams, who in turn learned it from others in the Internal Revenue Service, that the President now has a number of new representatives dealing with IRS with regard to this matter. By new representatives, I mean additional attorneys in addition to attorneys representing him during the audit.

He told me that a suggestion has been made that the President may, before making the payment, the 1969 payment, seek a ruling from the Internal Revenue Service as to whether he can deduct that payment as a charitable contribution. The Commissioner was careful to say that no formal request for such a ruling has been made, nor was he told this directly.

The Commissioner has also informed me that he has stated publicly that he did not think an individual who paid an amount under these circumstances would be entitled to a charitable deduction.

Mr. DANIELSON. And I have one question for Mr. Folsom, if I may, apropos of the same point, statute of limitations. Is it not true that in the event of a false or fraudulent return with intent to evade tax, the tax may be assessed or proceeding in court for collection of such tax may be begun without assessment at any time?

Mr. FOLSOM. That is correct.

Mr. DANIELSON. Does that apply as well to civil fraud as it does to criminal fraud?

Mr. FOLSOM. Yes, sir.

Mr. DANIELSON. Thank you. I yield back.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Thank you, Mr. Chairman.

The first question I would like to ask, since it was asked down at the other end, is about no sworn statements being taken in this case. That is not unusual. We have had no sworn statements in several instances, have we not?

Mr. DOAR. That is true. Most of our interviews have been taken just as interviews.

Mr. LATTA. So this is not unusual?

Mr. DOAR. No, it is not.

Mr. LATTA. Well, speaking about sworn statements, I read in the paper where you had interviewed Mr. Colson. Is that true?

Mr. DOAR. We have interviewed Mr. Colson.

Mr. LATTA. Was he under oath?

Mr. DOAR. No, he was not under oath.

Mr. LATTA. A question has been raised about the insulation, and I want to direct this question to Mr. Folsom, because he indicated that the President of the United States was insulated, to use his phraseology, from the agents, could not be interviewed. I might say as a

member of the committee and as an American citizen, I did not like the tie-in of the President of the United States with gamblers.

Mr. FOLSOM. I tried to——

Mr. LATTA. I did not like it.

Mr. FOLSOM. I tried to preface my remark that it was not intended to bear any implication in this case.

Mr. LATTA. In this respect, has this President been more or less insulated from these agents than prior Presidents?

Mr. FOLSOM. I have no idea.

Mr. LATTA. How long were you there?

Mr. FOLSOM. I have been in the Tax Division for 24 years.

Mr. LATTA. How did you know that this President was insulated and other Presidents were not insulated?

Mr. FOLSOM. I have read the Joint Committee report, sir.

Mr. LATTA. That is what you were basing your professional knowledge on, that report, rather than your own experience?

Mr. FOLSOM. That and the information we saw in the Internal Revenue Service file of the Intelligence Division.

Mr. LATTA. Since you were basing your professional opinion in this case on that Joint Committee report, are there other instances on which you were giving this committee professional opinions that you based your opinion on that report rather than on your experience?

Mr. FOLSOM. I was concluding that this taxpayer was treated differently, on the basis of what I understood, from the ordinary taxpayer, who is the subject of a fraud investigation.

Mr. LATTA. That is not my question, Mr. Folsom.

Mr. FOLSOM. Then I do not understand your question. If you are asking me if other Presidents have come within the ambit of my experience, they have not.

Mr. LATTA. I will rephrase the question.

Since you indicated that you are here as an expert witness before this committee, you said in answer to my question concerning the insulation of the President that you were basing it on the information contained in this joint study. Is that correct?

Mr. FOLSOM. Yes, sir.

Mr. LATTA. My question, then, was what other, if any, testimony that you have given here as a professional witness have you based on this testimony or this book rather than on your own knowledge, if any?

Mr. FOLSOM. I would answer the Congressman saying that I applied my knowledge and experience to what I found in this book and in the research done by your staff.

Mr. LATTA. When did you leave the Internal Revenue Service?

Mr. FOLSOM. I have never been in the Internal Revenue Service. I am an attorney from the Tax Division of the Justice Department and retired in 1972, in December. I am a consultant still for the Department of Justice.

Mr. LATTA. I would suggest, Mr. Chairman, if we are going to get into any further conversations on this, that we get Commissioner Alexander before this committee to give the testimony for the Internal Revenue Service.

That is all I have to say.

The CHAIRMAN. The time of the gentleman has expired. Mr. Thornton.

Mr. THORNTON. Thank you, Mr. Chairman.

Mr. Folsom, the questions just raised by Mr. Latta seem to me to go to the statement or characterization of your testimony that the President did receive different treatment from the ordinary taxpayer and raises then perhaps a couple of subordinate questions. Why did he receive a different treatment? Based upon your statement, and further, if as hypothesized by Mr. Latta, perhaps other Presidents may have also been accorded a different treatment, would knowledge of that different treatment accorded by the IRS go to the question of mens rea as to when he might expect to receive a different treatment in tax from what the ordinary citizen would receive?

Mr. FOLSOM. I think one would have to be extremely careful to draw an inference from the man's high office that he knowingly hides behind that high office to slide over accurate tax reporting. We are not here making jury speeches, so I would not care to make the statement to this committee that that is an inference that I would draw on the basis of the record I have before me.

However, it certainly is a fact to which I can ascribe as a Government employee of long standing that everyone in the executive branch stands in awe of the highest Executive in our land, and that speaks for itself.

Do I answer your question?

Mr. THORNTON. Thank you. To your knowledge, has there ever been an IRS audit of any President?

Mr. FOLSOM. I could not answer the question. I do not know.

Mr. THORNTON. Thank you. I yield back the balance of my time.

The CHAIRMAN. For the purposes of clarification only, Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. Folsom, does the offense defined in section 7206(2) require any knowledge, consent, or participation by the taxpayer himself?

Mr. FOLSOM. The statute expressly said with or without the knowledge of the taxpayer.

Mr. DENNIS. So the answer to that question is "No."

Mr. FOLSOM. No; that is correct.

Mr. DENNIS. Under the language of section 6653(a) can the 5-percent penalty therein provided for be properly assessed where there is an intent to defraud? Or to put it another way, under the language of that section, can the 5-percent penalty therein provided for—it can be assessed only when there is no intent to defraud, is that not correct?

Mr. FOLSOM. That is the way I would read the statute, yes.

Mr. DENNIS. That is the way I read it, too. Thank you, sir.

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

Just as a quick followup on that point, Mr. Folsom, it is true that if evidence is provided that would indicate fraud, that would not, simply by the negligence payment of 5 percent, that would not close out the option of a fraud action by the Tax Division, am I right on that?

Mr. FOLSOM. That is correct. A grand jury could indict regardless of what the administrative agency determined.



Mr. DENNIS. Would the gentleman from Iowa yield one moment?

Mr. MEZVINSKY. I only have 5 minutes.

Mr. DENNIS. Well, I want to give you 4 of them.

Mr. MEZVINSKY. Can I finish my time and if my time—

Mr. DENNIS. Oh, never mind.

Mr. MEZVINSKY. The second point is we know when you discussed criteria that you were discussing the background as to any other ordinary taxpayer. Would you care to point out—in this case, we have a taxpayer who is a lawyer. He has made public testimony that he has practiced considerable tax law. Is there any distinction between a lawyer and a nonlawyer regarding the use of a preparer of a tax return?

Mr. FOLSOM. The tax cases would warn us to be extremely careful in drawing excessive inferences against lawyers absent proof that they had highly specialized knowledge in the field in which we are talking.

Now, I do not know whether that answers your question or not.

Mr. MEZVINSKY. Well, do you take into account the background of a taxpayer?

Mr. FOLSOM. Yes, yes, it certainly is a circumstance that has to be taken into account.

Mr. MEZVINSKY. Now, the last question would be, as I understand your initial comment this morning regarding the criteria of any ordinary taxpayer, am I correct, then, in assuming that if a taxpayer does not answer questions and is under the set of circumstances that you have described here on behalf of our situation, that the burden would then shift to the taxpayer regarding the question of fraud; namely, that if the interrogatory—if the taxpayer does not come forth and answer the matters that were presented, or is not interviewed or is not seen, then in fact the burden would shift regarding any matter that could possibly be recommended to a grand jury? That follows the burden question that Mr. Sarbanes had.

I thought you went into that at the closing part of your initial presentation and I just wanted a clarification of that.

Mr. FOLSOM. I would have to say that administratively, in considering whether a case should be referred for prosecution, certainly the failure of the taxpayer to respond, without putting, putting aside any claim of the fifth amendment—if he claims the fifth amendment, no inference can be raised. If he is given an opportunity to answer questions and declines to do so, the area is left open for inferences to be drawn and the prosecutor would tend to draw unfavorable inferences.

Mr. MEZVINSKY. I will be glad—my time is up, Mr. Chairman. I have no further questions.

The CHAIRMAN. Did you yield?

Mr. MEZVINSKY. I have used up my time, Mr. Chairman.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Just to clarify a question I had asked earlier regarding the inconsistency on the President's tax returns respecting San Clemente, which was treated in one instance as a nonbusiness property for the purposes of the sale of the New York apartment, and then secondly, on the same return was treated as a business property for the purposes of a 25-

percent deduction—this is on the 1969 tax return—I would like to ask Mr. Folsom, from your experience, what inferences do you draw from an explicit inconsistency on the face of a return of this nature?

Mr. FOLSOM. Well, it is the nature of prosecutors to draw unfavorable inferences from such inconsistencies. Given some further understatement of tax and income, we would tend to argue that, in the face of the return that was inconsistent or improper, was a guide to the taxpayer's state of mind.

Ms. HOLTZMAN. Thank you.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, thank you.

Mr. Folsom, I had one question for you, sir. If the preparers of the income tax are convicted for tax fraud, would this be sufficient to suspend the statute of limitations on the President's 1969 return?

Mr. FOLSOM. Not absent proof that the President was implicated.

Mr. BROOKS. No further questions, Mr. Chairman.

The CHAIRMAN. That concludes the list of individuals who wanted to ask questions.

Mr. Donohue did not ask any questions, so we will recognize Mr. Donohue.

Mr. DONOHUE. I would like to get this clear in my mind. You say the law as it pertains to gifts to the Government is set forth in section 170(a)(1) of the code.

Mr. McKEITHEN. That is correct. Section 170 in general deals with charitable contributions, yes, sir.

Mr. DONOHUE. Now, section 170-1(b) contains the following language, does it not: "Ordinarily, a contribution is made at the time delivery is effected."

Mr. McKEITHEN. What was the number of the section to which you were referring?

Mr. DONOHUE. Section 170-1(b).

Mr. McKEITHEN. You must be referring to the regulations, is that right, sir, not the code?

Mr. DONOHUE. I am referring to tab 2 under the subsection, "Law."

Mr. McKEITHEN. Yes, sir.

Mr. DONOHUE. Now, what interpretation should we give, then, that the minute the papers of President Nixon were delivered to Archives with the intent to make a gift to the Government, that constituted a gift to the United States? Or is there something in the law that is required for them to go a step further such as to execute a deed or to execute some legal instrument indicating the transfer of title?

Mr. McKEITHEN. The cases dealing with the subject of gifts generally say that three items must be present: intent of the donor; delivery in this case; and notice to the donee ordinarily. I think since a larger bulk of papers was delivered to the Archives than was covered by the deed—

Mr. DONOHUE. Let me interrupt you there.

Mr. McKEITHEN. Yes, sir.

Mr. DONOHUE. Where in the law does it say that a deed be executed?

Mr. McKEITHEN. The law itself for the purposes of giving a gift does not require a deed as such for income tax purposes. Is that your question?

Mr. DONOHUE. Yes.

Mr. McKEITHEN. A deed is one of the evidences of intent, let us say.

Mr. DONOHUE. But there is nothing in the code or no regulation on the part of GSA that a deed shall be given as evidence of the transfer of title?

Mr. McKEITHEN. In the GSA regulations regarding Presidential libraries, a deed transferring title is suggested.

Mr. DONOHUE. Is it required?

Mr. McKEITHEN. It is not required.

The CHAIRMAN. That concludes this morning's presentation and we will recess until 2 o'clock.

Would you please return the documents that were included in that report?

[Whereupon, at 12:30 p.m., the committee recessed to reconvene at 2 p.m. this same day in secret session.]

[The remaining portion of the June 21, transcript is classified and not reprinted here.]



# IMPEACHMENT INQUIRY

## Business Meeting

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MONDAY, JUNE 24, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:50 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will please come to order.

The members have today's agenda before them. I would like to advise that since we have now reached the end of the presentation or the initial evidentiary phase of the inquiry, today and for several days just ahead, we will be making some basic decisions regarding the committee's future course and it is the hope of the Chair that we will proceed to make these choices with an eye toward concluding the deliberations of this committee sometime in the latter part of July. In order that we fulfill our responsibility to conduct a fair and thorough inquiry and accommodating the need to come to as prompt a conclusion as is consistent with that responsibility, I think it would be important for us to bear in mind that we will have to try to compress a good many matters that are going to be considered within a time frame which I am sure the members realize is a necessity for us.

Today we are going to consider the request for subpoena authorizations and the limitation of the President's counsel to respond to the presentation. Tomorrow we will be considering the question of the release or publication of materials developed during the evidentiary phase of this inquiry and the question as to the witnesses who will be called before this committee. I am hopeful that we may be able to determine that after today's meeting, Mr. St. Clair will be invited to

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respond with his initial evidentiary presentation himself by Thursday of this week and that following this, we will be able to, next week sometime, begin the calling of witnesses. That matter, of course, will be decided upon tomorrow sometime.

[Committee business unrelated to the impeachment inquiry has been omitted.]

I recognize the gentleman from Pennsylvania, Mr. Eilberg.

Mr. EILBERG. Mr. Chairman, I move that the chairman be authorized to send a letter to Chairman Fulbright responding to the Foreign Relations Committee's request of June 13 to make available any documents or other information in possession of the committee relating to Dr. Kissinger's role in the wiretapping operation. Such response will advise Chairman Fulbright that the Department of Justice has informed our counsel that it has forwarded directly to the Foreign Relations Committee all material respecting Dr. Kissinger that it has furnished to the Judiciary Committee.

Mr. McCLORY. Mr. Chairman, may I inquire?

This would involve sending a letter to the chairman of the Senate Foreign Relations Committee and would indicate that we have no objection to any materials being received by his committee, but subject to any objections that any other agency might have. Is that about it?

The CHAIRMAN. That is correct. As the gentleman knows, the chairman of the Senate Foreign Relations Committee sent a letter to me as chairman on June 13 requesting material which we have in our possession relating to some of the matters discussed during the phase of our wiretapping inquiry. The counsel for the impeachment inquiry was directed to discuss this matter with the Justice Department. The Justice Department has advised special counsel that it has already furnished directly to the Senate committee all the relevant material it has furnished to us. I would so advise Chairman Fulbright.

Mr. McCLORY. Thank you, Mr. Chairman, because I want to be sure that our committee does not impose any impediment whatever to Dr. Kissinger's vindication or exoneration of any charges or allegations that have been made regarding his individual conduct. Just so we are offering our cooperation and certainly not indicating that we are blocking any kind of clarification of this subject.

The CHAIRMAN. The question occurs on the motion of the gentleman from Pennsylvania. All those in favor of the motion, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[No response.]

The CHAIRMAN. The ayes have it. The motion is agreed to.

I recognize the gentleman from Texas, Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I would like to say that I propose to offer motions for four subpoenas—first on ITT, second on the dairy industry's contributions, third on domestic surveillance, and fourth on the Internal Revenue Service. These four subpoenas are to this same extent. A copy of the subpoena and the attachment giving the detailed request for information and data is in each member's folder. Already delivered in our offices has been a detailed justification of each of these four separate subpoenas, plus there is this, of course. We who have attended the executive meetings know that most of this material is

required as a result of the presentation of data that we have already heard in executive session and while that material has not been reproduced in the justification because of the confidentiality provisions under which this committee operates, it is known to the members. I would at this time, Mr. Chairman, move that the Committee on the Judiciary authorize and direct the issuance and service upon Richard M. Nixon, President of the United States, of a subpoena to be signed by the chairman, the text of which is at the desk and copies of which are now before the members of the committee, being the one on the ITT operation.

Mr. McCLORY. Would the gentleman yield?

Mr. BROOKS. I will be pleased to yield to my distinguished friend from Illinois.

Mr. McCLORY. The question I have with regard to this subpoena and with regard to all the subpoenas being presented this morning is this: Have we previously directed a letter to the President requesting the furnishing of these materials which was sent pursuant to the joint agreement of the chairman and the ranking minority member?

Mr. BROOKS. I am not certain. I am sure that it was fruitless if we did. But counsel could tell us. Have we written a letter?

Mr. DOAR. With respect to the matters requested in the ITT and milk price support subpoenas, we have written that letter.

With respect to the matters in the IRS subpoena, we have requested that from Mr. St. Clair, the 17 minutes of the tape of the meeting following the meeting on September 15 between John Dean, the President, and Mr. Haldeman. We have not requested the meeting between Mr. Haldeman and the President prior, immediately prior to the meeting with John Dean.

With respect to the matters on domestic surveillance, we have not written a letter to Mr. St. Clair with respect to some of these matters, because these matters just recently came to our attention. They relate to a number of conversations, particularly between the President, Mr. Colson, and Mr. Haldeman during the summer of 1971 and between the President and Mr. Ehrlichman in September 1971. They relate to matters that were developed for the committee and information that came to our attention after the President advised the committee that he would not honor or respond to any further subpoenas.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, I have supported most of the subpoenas here on the theory that it is our duty to obtain all the information we can obtain, and I may support these on the same theory. But I am faced with this problem: I have heard the evidence, for instance, on the ITT that we have had here—you all have. However that evidence may be characterized, it has not seemed to me to establish any kind of an impeachable offense at this point or even to indicate it very much. But whatever it is, the basic conversations we have had before us. Now, it is very difficult—here you get the justifications, of course, the morning of the hearing, and I am not saying that we can do any better, but I wish we could. They are awfully long and I would like to know what I am doing. What I am wondering is, what are we asking for here that we have not already had? What is there here that we really need, that we have not already had put before us on this subject?

The CHAIRMAN. Mr. Jenner.



Mr. JENNER. Thank you, Mr. Chairman. In response, Mr. Dennis, on ITT, the only thing that is new is sub-B.

Mr. DENNIS. Sub-B of the subpoena now?

Mr. JENNER. Sub-B of the justification.

Mr. DENNIS. Of the justification on ITT?

Mr. JENNER. Of the schedule, I should say. It is the third page of the ITT subpoena. Those are copies of the daily news summaries that were compiled by the White House staff members during February 22, 1972, through June 9, 1972, and—

Mr. DENNIS. Well, if I may ask counsel, if sub-B of the subpoena is the only thing new, what are we subpoenaing A-1 through 12 for?

Mr. JENNER. We are subpoenaing those, Mr. Dennis, because pursuant to the practice that the committee has pursued, instead of asking for a subpoena based upon the letter that we sent to the President, that the committee have the evidentiary material that was presented so you would have more information with regard to the pertinence after the items requested in the schedule supporting this subpoena.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, the material subpoenaed, proposed for subpoena with respect to ITT, all relate to times and events after the decision was made to not pursue the appeal and settle the case. Is that correct?

Mr. JENNER. That is correct, sir.

Mr. WIGGINS. All right, now. I take it, then, that the subpoenas are attempting to develop evidentiary material on some theory other than a corrupt bargain.

Mr. JENNER. That is correct.

Mr. WIGGINS. Would you explain to me what that theory is.

Mr. JENNER. That theory is, Congressman Wiggins, that during the course of Mr. Kleindienst's confirmation proceedings before the Senate Committee on the Judiciary, various statements were made by Mr. Kleindienst to that committee, if I may use the word "mistaken" rather than a more severe word, mistaken statements made by Mr. Kleindienst before that committee. Whether those statements came to the attention of the President and if so, then what did the President do or not do in that respect, and in addition to the materials actually presented to you, it was determined by the staff to recommend to you that we also obtain copies of the news summaries that the staff was in the habit of preparing each day with regard to the reports in the press.

Mr. WIGGINS. That is to establish Presidential knowledge? Is that the purpose of it?

Mr. JENNER. Yes; for your consideration and the consideration of all members of the committee as an item bearing upon your ultimate decision as to whether or not and the extent to which the President had knowledge.

Mr. WIGGINS. Well, then, all of this relates to a theory that if the President had knowledge that Mr. Kleindienst testified falsely before the Senate, that it perhaps is impeachable with respect to the President because of his failure to do something at that point; is that correct?

Mr. JENNER. That is correct, sir.

The CHAIRMAN. The question is on the motion.

Mr. LOTT. Mr. Chairman?

The CHAIRMAN. Mr. Lott.

Mr. LOTT. First of all, Mr. Chairman, this motion would include all four subpoenas; is that correct?

The CHAIRMAN. No, no, this motion is addressed only to the I.T. & T.

Mr. LOTT. If I could, sir, I would like to ask a question.

The CHAIRMAN. Mr. Lott.

Mr. LOTT. Did you have something further, Mr. Jenner?

Mr. JENNER. No; I was holding my finger up to indicate it was one subpoena.

Mr. LOTT. Have we received any additional material, whether subpoenaed or requested, have we recently received any material from the White House through Mr. St. Clair?

Mr. DOAR. We received the transcript of the April 4, 1972, conversation between the President and John Mitchell, an edited transcript.

Mr. LOTT. Now, explain to me why we are again, this time for the first time, including in the subpoenas materials which have previously not been requested.

Mr. JENNER. Congressman Lott, in part, perhaps, an oversight on the part of the staff of something that we—we had it in mind but we did not include it in the letter. The thrust of it did not come home to us really seriously until we were in the course of presenting the evidentiary material to you. And since the issue presented is the possible knowledge of the President, when we learned and began to think more seriously about it, that there was a practice of preparing daily news summaries for the President to scan, it occurred to us that the staff had an obligation, a professional responsibility to this committee, to draw your attention to that additional source of information which you might consider. So we have included it in this subpoena.

Mr. LOTT. Is this material in the subpoenas, has it all been—have you received some sort of refusal from counsel or more or less just no response? Refusal or no response.

Mr. JENNER. Refusal, Congressman.

Mr. LOTT. Let us dream for a minute that we might get this material under this subpoena. What would you intend to do with it, based on any projected schedule that we might have? In other words, would we again go into the type of meetings that we have been having? Would you present us with an additional book or would this just be supplementary material? How would it be handled? I am just trying to get to the point of what we are going to do.

Mr. JENNER. Obviously, Mr. Lott, we would not expect this to be hearing material received from other committees of the Congress or grand jury material. This would be material which we would not feel would need to be presented in executive session. What we would do, as we anticipate, is assemble the material in a booklet distributed to the members of the committee.

Mr. LOTT. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. Mr. Jenner, I intend to vote for all of these subpoenas, as I have all of the others. But I was wondering on the "B"

part here, are we not getting a little bit unreasonable when we are asking the accused to submit copies of clippings from newspapers over a 3½ month period? Is that a reasonable request?

Mr. JENNER. I would suggest, Congressman Sandinan, that it is a quite reasonable request. We anticipate and expect that that material is assembled from day to day and assembled in booklet form.

Mr. SANDMAN. But is this not available to the committee through other means that we can get without subpoenaing the White House? Is it only newspaper clippings?

Mr. JENNER. No; it is summaries, Congressman Sandinan. There may be some clippings in the materials submitted to the President, for example, as of this morning, on the news yesterday in the various papers, where the staff—and I am speculating now, sir—that the staff would want the President to read all of a particular article that might appear. But we understand these are summaries of the news presented by the staff.

The CHAIRMAN. Mr. Railsback?

Mr. RAILSBACK. Mr. Jenner, am I correct that from what you said, the first 12 items were the subject of a letter request that we made earlier; is that correct?

Mr. JENNER. That is correct, sir.

The CHAIRMAN. Mr. Butler

Mr. BUTLER. My question is directed to counsel: I am indifferent as to which one of them chooses to answer. But I am wondering, this is kind of something new to me too, to ask for a news summary prepared by a man's staff for his own use. Let us assume for the moment that we get these news summaries. Do we therefore assume that the President had knowledge of everything that was in the news summaries? If the President does not produce the news summaries, do we therefore assume, as we have said in the past, that there must be something adverse in them or he would give them to us?

These things trouble me, because it seems to me we have taken pretty much the view that those things which we have subpoenaed of the White House that have been withheld are, that some sign of adverse interest arises from it. So I would appreciate it if you would explore your view of that before we undertake this step.

Mr. JENNER. I express my view, sir—

Mr. BUTLER. Well, let us explore that. Is this a question you have discussed or are we going to get you—

Mr. JENNER. This is a view that Mr. Doar and I have discussed, not confined to ITT and this particular item, that the staff must bring to the attention of the committee all of that which may have some evidentiary prohibitive value. The ultimate decision as to the weight to be given to that material is for the ladies and gentlemen of this committee. There will always be, as there always are, in litigative matters various degrees of credibility and weight to be given to items of evidence, testimony, documents, and whatnot. It is reasonable to assume that where a practice exists as here, we are so informed, that daily news summaries were prepared by the staff for the purpose of submitting to the President each day for his examination and presumably—a rebuttable presumption, of course—but presumably, since that was the practice and purpose that was pursued, that the President did see some of those materials, if not all of them, depending upon the degree of need.



This is a short-compass area in time—that is, the hearings before the Senate Committee on the Judiciary respecting Mr. Kleindienst's confirmation and the possible, the knowledge of the President as to much of his testimony, of his own knowledge of the facts and his having been alerted, if he was alerted, by these news summaries, did he pursue it further? Now, much of this area is the process of drawing inferences from this material as well as a lot of other material that you received. For example, and this does not breach the rules of confidentiality, if you will recall from the proof, one item of the proof—I will confine myself to the organization and appointment of the Special White House team to police the Kleindienst confirmation proceedings. You will recall that, sir. All of that will be part of a ball of wax, so to speak, which the committee members will consider on the issue of knowledge of the President with respect to a course of events which was then public for the whole country to observe.

Mr. SEIBERLING. Will the gentleman yield?

Mr. BUTLER. Yes, I yield.

Mr. SEIBERLING. Well, is it not correct that in the past, we have had some indication that the President writes notations on the news summaries and that if this proved to be the case in connection with these, it might definitely indicate that he had seen the particular summary?

Mr. DOAR. That is correct.

Mr. JENNER. Congressman Seiberling, that is an observation. You will notice in some of these subsequent subpoenas, we do specify all notes and whatnot.

Mr. SEIBERLING. Does this include notes in this subpoena?

Mr. DOAR. Yes, notes of the conversations.

Mr. SEIBERLING. I mean notated summaries, with the President's notations on them?

Mr. DRINAN. Will the gentleman yield on that?

On that precise point on page 9, counsel, you make the observation that from time to time the President makes written comments and notations on these news summaries. The President's copies of these news summaries would be probative. Yet under B of the actual subpoena. I fail to see that you have specifically mentioned that we want the President's copy, along with all of his notations.

Mr. SEIBERLING. That is exactly my point.

Mr. DOAR. I think that is a very worthwhile suggestion and would ask the committee to permit the subpoena, subparagraph B, to read, instead of "those copies," "the President's copies."

Mr. DRINAN. Along with his notations and comments?

Mr. DOAR. Yessir.

Mr. DRINAN. Thank you.

The CHAIRMAN. Would the gentleman restate his suggestion?

Mr. DRINAN. Mr. Doar has stated it very well. I am sure, Mr. Chairman, that he will put in language which makes the point that I have raised. Thank you.

Mr. DENNIS. Mr. Chairman, I would like to know what language is in it before we vote, if that is not unreasonable.

The CHAIRMAN. Will the counsel read the language that he intends to insert in there at the suggestion of the gentleman from Massachusetts, and please identify where.

Mr. DOAR. It is on page 2 of the schedule attached to the ITT subpoena. It would read, the first word, "those," would be stricken, and in place thereof would be inserted the following words: "The President's copies and all his notes and memoranda attached thereto of," and then it continues on, "daily news summaries."

Mr. JENNER. Mr. Chairman, may I consult with Mr. Doar for a moment?

The CHAIRMAN. Yes, Mr. Jenner.

Mr. DENNIS. Mr. Chairman, may I address a question or two to counsel?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. It seems to me we have two different elements involved here. We are either asking for Presidential notes which are placed on a news summary that he received which indicates that he personally saw this and made his own personal memorandums on it, or we are requesting this for the purpose of indicating that there was general public information regarding events which came to the or should have come to the President's attention from which you might draw or not draw inferences. I think we either have to pursue one course or the other and it seems to me we are pursuing a different course in this suggested amendment—I guess suggested by Father Drinan or Mr. Seiberling—as I understood counsel's recommendation to this committee. Would you comment on that observation and precisely what it is we are trying to establish by this request and which request we are making?

Mr. DOAR. Well, the practice of the, as has been developed, I believe, in the evidentiary presentation and will be further developed before the hearings are concluded, was the practice of the White House staff to furnish to the President each day a summary of all news articles. The President, we know from one or two summaries that we have that the President made notes on his copy of the summary and sent it back to Mr. Haldeman or whoever it went to for possible action or comment or reaction. It is that—it may well be that on one of the news summaries, instead of writing in the margin, the President wrote on a buck slip and attached that on top of his copy. My understanding of Father Drinan's suggestion was that we cover the buck slips and notes and memorandums that he had.

Mr. BROOKS. Mr. Chairman, would the gentleman yield?

Mr. McCLODY. Yes, I yield to the gentleman.

Mr. BROOKS. I see no objection to the amendment. I would accept the amendment and I would hope that we could move on with this. We have a rather interesting item in section 5 and I would like to get these concluded if there is no further question.

Mr. McCLODY. Let me ask one more question, then, if I may.

As I understand it, there are two different theories, though, on which we would be requesting this information. One would be with regard to the take care requirement of the President to execute faithfully the laws, and the other would be related to some individual wrongdoing, is that not correct? So which way are we moving in respect to this request?

Mr. DOAR. No; I do not think there are—the purpose is to just provide additional evidentiary material with respect to the awareness,

knowledge, of what was going on up before the Senate Judiciary Committee during the Kleindienst hearing.

Mr. DENNIS. Will the gentleman yield?

Mr. McCLODY. I yield, yes.

Mr. DENNIS. Mr. Doar, assuming you establish that the President knew what was going on in the Senate Judiciary Committee, is it your judgment that that establishes any sort of criminal offense on the part of the President?

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. I think that is a question for the members of the committee to answer.

Mr. DENNIS. Well, I think, Mr. Chairman, with all due submission, that we are now arguing whether this is relevant and proper to our purposes here for a subpoena and it seems that counsel's theory on that is very germane to that inquiry. In other words, where are we going if we establish everything that is suggested? Is it an offense? If so, what?

Mr. SARBANES. Would the gentleman yield?

Mr. DENNIS. I have a question pending.

Mr. McCLODY. I yield to the gentleman, yes.

Mr. SARBANES. The question before the committee is whether there is impeachable conduct. I notice the gentleman used the words, "criminal offense", and I, of course, would not consider those two things as being coincidental. The question on impeachable conduct very clearly is, if you are the President of the United States and an appointee of yours to the Cabinet has gone before a Senate committee in confirmation hearings and not fully told the truth, what is your responsibility? I think in the end, the members of the committee will have to judge that.

Mr. McCLODY. Mr. Chairman, as I interpret this, this relates solely to the question of the President's take care responsibility under the Constitution and I do not think I see any objection to the amendment.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I thank the chairman. Of course the ultimate conclusion as to what is impeachable conduct lies with Mr. Sarbanes and me and the rest of us, I grant you that. But I do think in assisting us in our decision that I am entitled to know whether Mr. Doar feels that this would or would not be any kind of a criminal offense if established, which is the only question I have asked him.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DENNIS. I asked the question. I would like the answer before I yield unless there is some reason for not.

Mr. SEIBERLING. I would like to comment on your question.

Mr. DENNIS. I do not yield right now if I have the floor.

The CHAIRMAN. Will counsel kindly address himself to the question?

Mr. SEIBERLING. I am going to make a point of order that the question is out of order. Mr. Chairman. I would think that under the circumstances outlined by Mr. Sarbanes, that was something I might consider as an impeachable offense and what Mr. Doar thinks is irrelevant. It is what the members of the committee think. That is why I make my point of order.



Mr. RANGEL. I would like to support the point of order, Mr. Chairman.

The CHAIRMAN. The gentleman has made a point of order. Does the gentleman insist on having the question answered?

Mr. DENNIS. Mr. Chairman, I guess I would like to be heard briefly on the point of order.

All I am trying to do is get the advice of counsel. I may not follow it and I am not deciding what is an impeachable offense. I just want to know what this very learned counsel thinks on this particular question. If that is out of order, that is a surprise to me. But I will take the ruling of the Chair, of course, if the gentleman insists on his so-called point of order.

The CHAIRMAN. Well, the Chair was inclined to permit the counsel to answer, that he could not respond properly, that is a matter that is properly for the committee members to decide. However, since the point of order has been raised, I think, that the point of order is sustained, since the counsel cannot appropriately undertake to answer for the members and make their decision for them.

Mr. DENNIS. I accept that.

Mr. WIGGINS. May I make a point of order, Mr. Chairman?

Does counsel want to have the question read to him. Does he have the purport of the question?

The CHAIRMAN. No, counsel could respond if he wanted to, except to say he did not believe that that was an appropriate question. I think that is the only answer that counsel could have made in that instance.

Mr. BROOKS. Question.

Mr. LATTI. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTI. Mr. Chairman, before casting my vote, I would like to explain my vote.

In the past, I have voted for these subpoenas because I looked upon them as a normal request and no more. I did not look upon them as something that we could force upon the President of the United States.

I also look upon myself as somewhat of a court of equity. I never like to do a useless act.

I feel the President is within his right of the doctrine of separation of powers to ignore these subpoenas, which he is now doing to the knowledge of every member of this committee. I do not intend to become a party to creating any impeachable straw men in this committee and asking the President of the United States to knock them down and we will use them as an impeachable offense. For that reason, Mr. Chairman, I intend to vote no.

The CHAIRMAN. The question is——

Mr. BUTLER. Mr. Chairman, may I be recognized?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Mr. Chairman, I would like to move to strike paragraph B of page 2 of the subpoena on the grounds that we have not previously asked for it and I consider it an unreasonable request of the President and of doubtful prohibitive value.

The CHAIRMAN. The question is on the motion of the gentleman to strike section B. All those in favor of that motion, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. FROELICH. Rollcall.

The CHAIRMAN. A call of the roll is demanded and the clerk will call the roll.

All those in favor of striking part B of that subpena, please say aye; all those opposed, no.

The CLERK. Mr. Donohue.

The CHAIRMAN. No. By proxy.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. No.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.

Mr. McCLORY. By proxy, aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. No.

The CLERK. Mr. Mayne.

Mr. DENNIS. Mr. Chairman, I have his subpoena proxy, and under a general instruction to support subpoenas, I will vote him aye. [Laughter.]

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

Mr. DENNIS. Well, I think I should vote Mr. Mayne's proxy the way he told me to vote it. This particular matter did not arise, but he said generally he was in favor of subpoenas, so I will vote him—well, I will vote him no.

And I may say, Mr. Chairman, that I am probably violating what he would like to do if he were here.

I vote him aye.

The CLERK. The clerk is confused on Mr. Mayne's vote.

The CHAIRMAN. The gentleman from Indiana voted the proxy of Mr. Mayne as no.

Mr. DENNIS. I vote Mr. Mayne's proxy as no.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman, 15 members have voted aye, 23 members have voted no.

The CHAIRMAN. And the amendment is not agreed to.

There being no objection to the adoption of the amendment offered by Father Drinan to the motion of the gentleman from Texas, the question occurs on the motion as amended. All those in favor of the adoption of the motion as amended, please say aye.

[Chorus of "ayes."]



The CHAIRMAN. All those opposed, no.

[Chorus of "noes."]

Mr. FROEHLICH. Rollcall, Mr. Chairman.

The CHAIRMAN. The ayes have it. A call of the roll is demanded.

All those in favor of the motion as amended, please say aye; those opposed, say no.

The CLERK. Mr. Donohue.

The CHAIRMAN. Aye by proxy.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. Aye.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. Aye.

The CLERK. Mr. Hutchinson.

Mr. McCLORY. No by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. No.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. DENNIS. Aye by proxy.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Chairman, 34 members have voted aye; 4 members have voted no.

The CHAIRMAN. The motion is agreed to. I recognize the gentleman from Texas.

Mr. BROOKS. Mr. Chairman, I move that the Committee on the Judiciary authorize and direct the issuance and service upon Richard M. Nixon, President of the United States, of a subpoena to be signed by the chairman, the text of which is at the desk and copies of which are now before the members of the committee. This refers to the milk price support subpoena which is available at your desk, the attachment to the subpoena. I would urge adoption of the motion.

Mr. McCLORY. Would the gentleman yield?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Have these materials been requested by a letter previously to the President?

Mr. DOAR. All of the materials listed in item B attached to the schedule have been requested. As a matter of fact, we reduced, limited our subpoena to only some of the materials we requested by letter. The daily diaries of the President for the 7 days, March 19, 1971, through March 25, 1971, had not been requested in that letter. But other daily diaries had been requested and refused.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I would like to inquire, particularly as I hold Mr. Mayne's proxy, whether it is planned to give early consideration to Mr. Mayne's request to obtain certain other records on this particular subject, which I think are not called for in this subpoena but which are desired by him and various members of the committee.

The CHAIRMAN. I would like to advise the gentleman that I have already notified Mr. Mayne that the item would be placed on tomorrow's agenda and the gentleman has tomorrow's agenda, I believe, on his desk. It is on the agenda for discussion tomorrow.

Mr. DENNIS. We intend to have the business session for tomorrow as scheduled on the agenda?

The CHAIRMAN. That is correct.

Mr. DENNIS. I thank the chairman.

The CHAIRMAN. The question is on the motion offered by the gentleman from Texas. All those in favor of the motion, please say aye; all those opposed?

Mr. LATTI. No.

Mr. FROEHLICH. Rollcall, Mr. Chairman.

The CHAIRMAN. A call of the roll is demanded and the clerk will call the roll. All those in favor of the motion, please say aye; all opposed, no.

The CLERK. Mr. Donohue.

The CHAIRMAN. Aye by proxy.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Drinan.



Mr. DRINAN. Aye.

The CLERK. Mr. Thornton.

[No response.]

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. Aye.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. Aye.

The CLERK. Mr. Hutchinson.

Mr. McCLODY. No by proxy.

The CLERK. Mr. McClory.

Mr. McCLODY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. No.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. DENNIS. Aye by proxy.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Mr. Thornton votes aye.

Mr. Chairman, 34 members have voted aye, 4 members have voted no.

The CHAIRMAN. And the motion is agreed to.

The gentleman from Texas, Mr. Brooks.

Mr. BROOKS. I move that the Committee on the Judiciary authorize and direct the issuance and service upon Richard M. Nixon, President of the United States, of a subpoena to be signed by the chairman, the text of which is at the desk and copies of which are now before the members of the committee.

This, gentlemen, refers to the domestic surveillance subpoena which is before you with its attachments. I ask approval of the motion.

Mr. McCLORY. Would the gentleman yield?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Would the counsel explain to us whether these have been requested by a letter previously? I think one part of it has not been requested. Would you explain why we are requesting this by subpoena?

Mr. DOAR. These items have not been requested by letter and the reason was that these arose in the course of the presentation of the materials to the committee on domestic surveillance at a time following the receipt by the committee of the letter from President Nixon advising the chairman and the committee that he would not honor any further subpoenas.

The second point is that they relate to certain conversations between the President and Charles Colson in the summer—principally in the summer of 1971. The information with respect to Mr. Colson's activities in the summer of 1971, and his discussions—alleged discussions with the President—with respect to these matters involving the *Ellsberg* case just came to our attention last Friday when Mr. Colson made a statement in open court.

Mr. DENNIS. This just relates to two conversations—one, the 13-minute conversation on September 15, and another conversation—

Mr. DOAR. No, no; you have the wrong subpoena, Mr. Dennis.

The CHAIRMAN. This is domestic surveillance.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman. Counsel, this series of requests relates to Presidential conversations having to do with the *Daniel Ellsberg* case in general, is that correct?

Mr. DOAR. That is correct, in the break-in case.

Mr. WIGGINS. The date of the Fielding break-in was in early September 1971.

Mr. DOAR. September 2.

Mr. WIGGINS. Three of the requests deal with conversations between the President and Mr. Colson prior to that date. The balance deals with the conversation after the break-in, is that true?

Mr. DOAR. That is correct.

Mr. WIGGINS. With respect to the prior conversations, the first one is justified on the basis that Mr. Colson submitted an affidavit, as I understand it, in *United States v. Ehrlichman*, to the effect that he had a conversation with the President in which the President emphasized the gravity of the leaks and his concern about Ellsberg, and that is the justification for wanting that conversation?

Mr. DOAR. That, plus certain material that was presented to the committee in executive session, including certain correspondence and memorandums that Mr. Colson wrote at about that time to Mr. Haldeman.

Mr. WIGGINS. Well, as a matter of fact, I had occasion to review that just last night, and it is contended that these subpoenas might produce evidence of a Presidential instruction to do certain things with respect to Dr. Fielding. Is that the thought that might result from the information on this subpoena?

Mr. DOAR. No. I think the question is to examine to see whether or not there was any—that the conversations might lend some light on the President's knowledge or lack of knowledge, participation or lack of participation in connection with the assignment that Charles Colson was carrying out with respect to the *Ellsberg* case.

Mr. WIGGINS. Now, the second item is a conversation occurring in June 1971. The supporting statement is that Daniel Ellsberg was indicted on this date. Is there anything else you know of that would justify the committee inquiring into a conversation between the President and Colson on that date?

Mr. DOAR. Well, yes. We have certain matters that we presented the committee in executive session, and this being the first meeting the President had with Charles Colson after a particular memorandum was presented to the committee in executive session.

Mr. WIGGINS. Well, my concern is, counsel, is if we have any information before the committee in executive session or otherwise that you can comment upon that would help me understand whether or not the subject of Dr. Fielding or the *Ellsberg* case, for that matter, was discussed between the President and Colson on the dates where you subpoena the information?

Mr. DOAR. Well, I cannot be precise, but in connection with the statement by Mr. Colson in court, and also in connection with our interviews, Mr. Colson has indicated that the subject was discussed. And we tried to be as careful as possible with respect to asking for materials. There was a number of conversations.

In our judgment, these conversations, based upon the information which we had, are necessary for the inquiry. As I say, they may show knowledge or lack of knowledge, participation or lack of participation, but it seemed to counsel that these particular conversations, that there might have been developments in the last few days in addition, both taking into account statements that have been made in public and further investigation by your counsel, that it would be appropriate to ask for this material.

Mr. WIGGINS. Well, I have a different view with respect to items 4 through 7 than I do 1 through 3. But, upon your representation that the purpose of this inquiry is to obtain information about the extent of the President urging, I think was the word that Mr. Colson used in the public statement, urging by the statement to disseminate derogatory information with respect to *Ellsberg*.

If that is the object and purpose of the subpoena, then I would have no trouble in supporting items 1 through 3.

Mr. DOAR. You have my assurance.

Mr. WIGGINS. All right. Thank you.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Would the staff recommend, are you in a position to say now that we call Mr. Colson as a witness before the committee?

Mr. DOAR. Well, I am not in a position to say that, Congressman



Flowers, until the committee adopts and decides the criteria for calling of witnesses. But, at the appropriate time we will be prepared to make a recommendation.

The CHAIRMAN. I would like to advise the gentleman from Alabama that that is a matter which is on the agenda for tomorrow and Wednesday, and I think it would be appropriate then, after we have had a discussion regarding this, to solicit recommendations from the staff counsel regarding this matter.

Mr. FLOWERS. Thank you, Mr. Chairman.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Counsel, in B of the actual subpoena, reference is made to the activities of the White House Special Investigations Unit. I wonder whether we should put in that we would like to have all things that are referred directly or indirectly to the origin as well as the activities of this unit, since I think that if they construe this narrowly they would say they would give us documents only after this unit, in fact, established its activities.

I would make a suggestion, therefore, that in line 6 of B that we would say directly or indirectly to the origin and to the activities.

Mr. DOAR. I think, Father Drinan, that is a constructive suggestion, and I thank you for it.

Mr. McCLODY. Mr. Chairman, may I ask another question?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. Have these tapes that are requested in this subpoena, are they included in the 64 tapes which the Special Prosecutor, Jaworski, has requested of the White House?

Mr. DOAR. The first five tapes are not. No. 6 has already been furnished to Judge Gesell in the case of *United States v. Ehrlichman*, or a transcript of that conversation. No. 7 has not.

Mr. McCLODY. So that none of these are requested by the Special Prosecutor, Jaworski, in the case that is now pending in the Supreme Court?

Mr. DOAR. That is correct.

The CHAIRMAN. The gentleman from Massachusetts has made a suggestion. Is that in the form of an amendment?

Mr. DRINAN. Yes, Mr. Chairman.

The CHAIRMAN. To the subpoena?

Mr. DRINAN. Yes; Mr. Chairman, simply to add the words, as I said to counsel, in line 6 of B of the subpoena that we would request all things which relate or refer directly or indirectly to the origin and to the activities of the White House Special Investigations Unit. "To the origin" are the added words.

The CHAIRMAN. The gentleman from Texas.

Mr. BROOKS. I have no objection to the amendment. I have no objection to the amendment. It might be a little more difficult to comply with, but I have no objection to it, and I would ask for a vote on it.

The CHAIRMAN. The question is on the motion of the gentleman from Texas. If there is no objection to the amendment offered by—

Mr. McCLODY. Mr. Chairman, reserving the right to object, the point that I am thinking about is this: what period would we be covering here? We would be going vastly beyond what is presently contemplated by part B, would we not?

Mr. DRINAN. Would the gentleman yield?

Mr. DOAR. No; we would not.

Mr. McCLORY. You think that it was intended to cover that in part B, was it?

Mr. DOAR. Yes.

Mr. McCLORY. I withdraw my reservation.

The CHAIRMAN. There being no objection, the amendment offered by the gentleman from Massachusetts, the question is on the motion offered by the gentleman from Texas. All those in favor of the motion, as amended, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[No response.]

The CHAIRMAN. The ayes have it and the motion is agreed to.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I move that the Committee on the Judiciary authorize and direct the issuance and service upon Richard M. Nixon, President of the United States, of a subpoena to be signed by the chairman, the text of which is at the desk, and copies of which are now before the members of the committee. This refers gentlemen, ladies, to the amendment on IRS, which is to the subpoena on IRS, which is before you, and the schedule is attached.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. With respect to this subpoena, have we requested this previously by letter?

Mr. DOAR. Not by letter, but I have had a conversation with Mr. St. Clair.

Mr. McCLORY. And he has declined?

Mr. DOAR. About these particular, particularly about the last 13 minutes of the tape on that day, and he said, he advised me, that he was opposing surrendering that tape to the court.

Mr. McCLORY. Are either of these tapes included in the request that Mr. Jaworski has made and is pending in the Supreme Court?

Mr. DOAR. Not pending in the Supreme Court, but there is an order outstanding requiring the production of item 1.

Mr. JENNER. Mr. Chairman, that is pending in the court of appeals.

Mr. LOTT. Would the gentleman yield?

Mr. McCLORY. I yield to Mr. Lott.

Mr. LOTT. Are we just talking about two tapes here?

Mr. DOAR. Two conversations. It is just, Congressman Lott, we have the tape of September 15 that was surrendered or delivered voluntarily from 5:27, and then we made a copy and were able to—the Secret Service copied an extra 10 minutes of the tape from 5:15 to 5:27. That material on that tape was pertinent to this inquiry, and we are asking for the conversation, the full conversation between Mr. Haldeman and the President of which we had a part that was pertinent before you, and the conversation after, after 6 o'clock, which Judge Sirica held was pertinent.

The CHAIRMAN. Might I address counsel? Is this not the conversation counsel discussed with the court?

Mr. JENNER. Yes, it is. Mr. Chairman. And Mr. Chairman, and ladies and gentlemen of the committee, as I reported, Judge Sirica ruled that under the mandate of the court of appeals that he was limited as to his disclosure of the contents of the last 17½ minutes, and that, therefore, he could not, however he might wish to do so, and he felt in the strict terms of the mandate he could not afford us an opportunity pursuant to your letter to him to listen to the additional 17½ minutes.

But he did say on that day when he made his ruling, that of the 15 minutes or 17½ minutes of tape, that a substantial portion of that tape, he having relistened to it, did relate to abuse of the IRS.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. As counsel knows, it is a violation of criminal law to disseminate confidential Internal Revenue information. During our evidentiary presentation, material was furnished indicating that someone at the White House, apparently at the White House, leaked such confidential information to a newsman, which was duly published. Does counsel contemplate issuing a subpoena for that newsman to advise the source at the White House for the dissemination of that confidential information so that we could determine whether or not the President was involved in that conspiracy to violate the criminal statute?

Mr. DOAR. No, we have no intention. We have not given that matter consideration.

Mr. HOGAN. Could counsel give me his opinion why not? If I am right in the statement that this is a criminal offense, then conspiracy to violate that criminal offense on the part of the President would undoubtedly constitute an impeachable offense.

Mr. DOAR. We just have not considered it.

Mr. HOGAN. Could I respectfully suggest that counsel consider that?

Mr. DOAR. Yes. Certainly.

Mr. HOGAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Froehlich.

Mr. FROEHLICH. Mr. Chairman, inasmuch as the purpose of this subpoena is to obtain the information on the schedule, items 1 and 2, and that information we know, as a matter of fact, is in the possession of both the President of the United States and Judge John Sirica, I would like to move that the motion be amended that a subpoena be directed also to Judge John Sirica to obtain this information.

The CHAIRMAN. The question is—

Mr. FISH. Mr. Chairman, if that motion is going to be put, may I respectfully ask the committee be given some advice from counsel as to the propriety of such an action?

Mr. HUNGATE. Mr. Chairman, are there written copies of that amendment at the desk?

The CHAIRMAN. Now, the Chair will advise that there are no written copies at the desks.

Mr. DENNIS. Mr. Chairman, parliamentary inquiry? I would like to know. I would like to know if it is in order for counsel to advise Mr. Fish?

The CHAIRMAN. Will counsel render his legal opinion?



Mr. DOAR. It is my judgment that it would not be proper to amend the subpoena to add another official to whom it is directed, without in any way expressing a judgment with respect—

Mr. FROELICH. Mr. Chairman, I am not trying to amend the motion to direct an identical subpoena to Judge John Sirica.

The CHAIRMAN. Well, that is not the question before the committee. The question before the committee is on this particular motion, on the particular subpoena.

Mr. FROELICH. Mr. Chairman? Mr. Chairman, will the chairman recognize me to make that motion following the vote on the subpoena? If so, I will withdraw my amendment.

The CHAIRMAN. Well, the Chair will defer consideration of that request.

Mr. FROELICH. Then, Mr. Chairman, I suggest that you rule the motion out of order.

The CHAIRMAN. The motion will be ruled out of order.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you. Mr. Doar, I noticed in the earlier subpoena regarding domestic surveillance that we included documents, we included in our request documents in the files of various White House staff members who might have information respecting the conversations of the general manner that we were looking into, and I want to ask you why with respect to the IRS matter, no such request had been made for notes, memorandums, and the like in the files of Mr. Haldeman, Mr. Dean, respecting various matters that we have considered in executive session relating to the IRS's possible abuse of IRS?

Mr. DOAR. Well, in connection with the materials, the subpoena includes the notes of Mr. Haldeman or anyone else at the White House that would have notes with respect to this conversation. We are seeking the conversation and all notes relating to it, not other materials, not other memorandums in the files.

Ms. HOLTZMAN. Well, do you intend to recommend to this committee that we seek a subpoena for notes and memoranda in the files of White House staff personnel relating first to these conversations, but as well as to other IRS matters that came to the attention of the committee during executive session?

Mr. DOAR. Well, we have not considered that. We would consider it.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Respecting the motion of our colleague from Wisconsin, I would hope that you would reconsider, Mr. Chairman, or make it in order for him to offer his motion at the meeting after we recess. I personally would want to oppose the issuance of such a subpoena, but I do not like to have the gentleman foreclosed on a point of order. And I would hope, Mr. Chairman, that you will consider favorably giving the gentleman the opportunity to offer his motion.

The CHAIRMAN. The Chair has stated already that he deferred consideration to a later time, and ruled out of order the motion just because it was not germane to the point that was before us. But, the gentleman has that right later on.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, in the memorandum setting forth the facts and basis underlying the summons, there is a statement that the supporting affidavit of the Special Prosecutor, dated May 28, 1974, substantiates allegations that in September 1972, the White House presented lists of enemies to the IRS, and that in August and September the White House unlawfully attempted to have the IRS investigate Larry O'Brien. I do not recall a copy of that affidavit. Do we have a copy of that in our evidence?

Mr. DOAR. I believe it is there. If it is not, we will furnish it to you.

Mr. WALDIE. I would appreciate that.

Now, a further question. In getting behind that affidavit from the Special Prosecutor, is there any possibility of our committee obtaining the evidence upon which the Special Prosecutor presented his affidavit to the court?

Mr. DOAR. Mr. Jenner and I are having discussions with the Special Prosecutor's Office about that subject.

Mr. WALDIE. Thank you.

The CHAIRMAN. The question is on the motion offered by the gentleman from Texas, Mr. Brooks. All those in favor of the motion please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[No response.]

The CHAIRMAN. The ayes have it and the motion is agreed to.

Mr. HOGAN. Mr. Chairman?

Mr. FROELICH. Mr. Chairman?

The CHAIRMAN. Mr. Froehlich.

Mr. FROELICH. Mr. Chairman, I have a subpoena at the desk. I would like the staff to read it. I have a subpoena at the desk that I would like the staff to read, Mr. Chairman.

The CHAIRMAN. The Chair would like to state that we have a quorum call on, and we are going to recess until 2 o'clock this afternoon.

[Whereupon at 12:10 p.m., the committee was recessed to reconvene at 2 p.m. this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. I recognize the gentleman from Wisconsin, Mr. Froehlich.

Mr. FROELICH. Mr. Chairman, I move that the Committee on the Judiciary authorize and direct the issuance and service upon John J. Sirica, judge of the U.S. District Court for the District of Columbia, a subpoena to be signed by the chairman, the text of which is at the desk.

The CHAIRMAN. The clerk will read the motion.

The CLERK. Would you like me to read the subpoena or the attachment, the schedule?

The CHAIRMAN. Read the subpoena.

The CLERK [reading]:

By authority of the House of Representatives of the Congress of the United States of America, to Benjamin Marshall—

Mr. BROOKS. Mr. Chairman, I ask that the motion be considered as having been read. I think that most of the members are familiar with the substance of it.

The CHAIRMAN. Without objection, it is so ordered.

Mr. FROEHLICH. Mr. Chairman?

The CHAIRMAN. Mr. Froehlich.

Mr. FROEHLICH. Mr. Chairman. Mr. Jenner, would you say that the conversation on September 15, 1972, between the President, H. R. Haldeman, and John Dean between 6 and 6:13 p.m., and the conversation on September 15 between the President and H. R. Haldeman between 4:43 and 5:27 is necessary and relevant to this inquiry?

Mr. JENNER. Yes.

Mr. FROEHLICH. Mr. Doar, do you agree with that?

Mr. DOAR. Yes, I do.

Mr. FROEHLICH. Mr. Jenner, in view of the interpretations that you have given as to the broad power of impeachment under the Constitution, and the sole power of impeachment, do you feel under that power we have the power to subpoena the evidence we need from wherever it is?

Mr. JENNER. Congressman Froehlich, I have given this matter considerable consideration. As far as raw constitutional power is concerned, the answer is very likely yes. However, in doing that, there is the problem of submitting to the courts or delegating to the courts, some of the power of the House of Representatives granted exclusively to it by the Constitution of the United States.

Now, if that sounds inconsistent with my yes, I have an explanation. It is the House has the raw power to issue the subpoena. However, if the subpoena amounts to a delegation of power or submission to the court of a part of the power of the House, then that subpoena is at least subject to challenge.

Mr. FROEHLICH. Well, Mr. Jenner, would you say the issuance of a subpoena to the President is sharing our constitutional power with the President?

Mr. JENNER. No; because the Constitution itself provides the only bridge from one independent and coordinate branch to another; in this instance, from the legislative branch to the executive branch, particularly the President, so that the House is fully exercising its grant of power under the Constitution insofar as its subpoena to the President is concerned.

Mr. FROEHLICH. Mr. Chairman?

Mr. JENNER. Not challengeable in a court.

Mr. FROEHLICH. Mr. Chairman, in view of the fact that counsel has indicated that we do have the constitutional power; in view of the fact that this is the best evidence available; in view of the fact that this information has already been indicated as necessary and relevant; in view of the fact that we have subpoenaed this information from the President, it is available from someone else. I think it is incumbent upon this committee to proceed to get the best evidence available.

Mr. RAILSBACK. Mr. Froehlich?

Mr. FROEHLICH. Yes.

Mr. RAILSBACK. After you are through, would you yield?

Mr. FROEHLICH. I yield.

Mr. RAILSBACK. Mr. Jenner, you are not suggesting, are you, that by a mere subpoena of records in the hands of the court we are submitting to the court's jurisdiction in any way?



Mr. JENNER. I am not suggesting that, Congressman Railsback. What I am suggesting is that if the response, if the response to the subpoena is negative, that there is a refusal or a failure then the only thing you can do is submit to the court with respect to enforcement of the subpoena.

Mr. FROELICH. Mr. Jenner, are you saying the negative response from the President requires us to submit to the courts for those subpoenas?

Mr. JENNER. No, I am not.

Mr. FROELICH. Then why does it require us to submit to the courts for a subpoena against Sirica?

Mr. JENNER. Because a subpoena issued to a member of a third independent branch of the Government as to which there is no bridge provided under the Constitution.

Mr. HOGAN. Would the gentleman yield?

Mr. FROELICH. I yield.

Mr. HOGAN. Is counsel saying that the House of Representatives itself does not have any subpoena power independent of the Judiciary?

Mr. JENNER. No, I am not, because I feel you do, and you issue subpoenas all of the time.

Mr. HOGAN. And we also have the power to enforce those subpoenas without recourse to the judicial branch.

Mr. JENNER. I have considerable doubt, Congressman Hogan, that the House has the power to hold any judge in contempt of court for failure to respond to a subpoena.

Mr. HOGAN. Are you saying that the Sergeant of Arms——

Mr. JENNER. The Congress has——

Mr. HOGAN. Are you saying that the Sergeant of Arms of the House of Representatives does not have the power to enforce the subpoenas of the Congress?

Mr. JENNER. No, I am not.

Mr. BROOKS. Would the gentleman yield? Mr. Hogan?

Mr. FROELICH. I yield to the gentleman from New York.

Mr. MARAZITI. Thank you.

The CHAIRMAN. Mr. Froelich has the floor.

Mr. MARAZITI. As has been said here on numerous occasions, according to the Constitution, the House has the power of impeachment. I do not think we have a right to anticipate in the first place, Mr. Jenner, that the response will be negative. It may not be negative and, therefore, on that basis alone, the subpoena should issue for the material in the hands of anyone, and in this particular case, it appears to be in the hands of the judge. And if he has it, we ought to have it. We should anticipate a positive response.

To think there is no limitation on the part of issuing subpoenas to the Executive, then why should there be a limitation on the part of the issuing of subpoenas to the other branch of the Government? And I feel that if we really want the information, we ought to issue the subpoena and anticipate a positive response. And if the response is negative, we will take it from there.

Mr. JENNER. May I respond, Mr. Maraziti?

Mr. MARAZITI. Yes.

Mr. JENNER. Thank you. The anticipative response is this: that on the day that Judge Sirica ruled with regard to that 17 or 16½ min-

utes, he stated in open court that because of the limited character of the mandate issued to him by the court of appeals, by which he was bound, that he did not have the power under that mandate to permit representatives of this committee to listen to that section of the tape.

Mr. FROEHLICH. Mr. Jenner, that is the reason for the subpoena, because we derive our power from the Constitution, and that supersedes that order from the court, that circuit court order. That gives the judge the opportunity to issue this information to us under our subpoena, under our power under the Constitution in an impeachment inquiry.

Mr. JENNER. I must respectfully say, Mr. Chairman, that the subpoena of the House of Representatives cannot supersede a mandate of the Court of Appeals of the District of Columbia.

Mr. MARAZITI. I submit, Mr. Jenner—

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. FROEHLICH. I yield to the gentleman from New Jersey.

Mr. MARAZITI. I have the floor, I believe, Mr. Chairman.

The CHAIRMAN. No, the time of the gentleman has expired.

Mr. BROOKS. Mr. Chairman, am I recognized?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. At this point I would like to say I hope to offer a motion to table this motion very shortly. I would not want to offer it now to preclude the comments of any of the members, and I would say that certainly that this Judiciary Committee has the full authority to subpoena any information that Judge Sirica or any court in this country has. And it is my judgment that if they do not, they possibly could be impeached themselves.

This Congress has impeached judges before, and it can do it again. There is no question legally about our full authority to subpoena information from any court in this land or from any judge in this land. And if necessary, they can read the record where the other judges have been impeached for various activities by this very body, the Congress of the United States.

Now, I want to say that when I offer my motion to table this motion, I say there is no question of our authority to ask for and issue subpoenas to receive and get this information that is the subject of the documents and is subject to the subpoena, and if we were not, we could sue the court of appeals or from wherever he thinks he gets his authority. There is always some question about where.

Well, I will not go into that. But, at this time I think it is not desirable as a policy decision for this committee to get into a controversy over a subpoena that we might get into with the judge. I do not think it is necessary at this time, and I would use that as a basis for supporting a motion to table.

Mr. SEIBERLING. Will the gentleman yield?

Mr. BROOKS. I yield to my distinguished friend, Mr. Seiberling.

Mr. SEIBERLING. Thank you. I want to say I completely agree with what the gentleman from Texas has said. This is obviously an effort to embroil this committee with the judicial branch of the Government, and it is a frivolous effort, because if the President responds to the subpoena which we have already approved, then it will be totally unnecessary. And I would not rule out the possibility that if the judge

had the sole possession of this information that this committee needed, that we should go ahead and subpoena it.

But, to send out a blunderbust kind of broadside here to subpoena, to subpoena material that is in the hands of the President, who is the originator of the files, is just a frivolous action and an effort to politically embarrass the judge and this committee.

Mr. McCLORY. Will the gentleman yield?

Mr. BROOKS. I yield to Ms. Holtzman if I have any more time.

Ms. HOLTZMAN. Thank you. I want to say that I also agree with the gentleman from Texas, but I would like to add one other point, and that is if the gentleman from Wisconsin anticipates that the court will comply with the subpoena, then let us just take that scenario, to use a very well chosen word, down the line.

There is no reason to believe that the President would stand for allowing the court to turn this material over to us. He has already opposed the effort of Judge Sirica to turn this tape over to the grand jury, which means that the question of executive privilege, if we go down this road, is going to be litigated in the courts.

And I think this committee has taken the position very firmly that the question of executive privilege in our right to obtain material from the President is not something that we are going to submit to the courts for determination.

And so I think that it is going to be—I think it is a serious error and I think it is contrary to the early position this committee very forcefully took about not submitting to the court's jurisdiction.

Mr. BROOKS. I yield to the gentleman from Maine, and then to my friend the Governor.

Mr. COHEN. I thank the gentleman for yielding. I would like to add, or perhaps ask another question. It seems to me that the debate so far has confined it to two alternatives. One, the court would simply turn down the subpoena, and the other was as the gentlelady from New York indicated, that he may comply with it.

But, I am sure there could be a third alternative, Mr. Jenner, or Mr. Doar. The court might very well obtain counsel and file a motion to quash, could it not, in which case, there would be litigation, and as the reasons so well articulated by my friend, Mr. Railsback from Illinois, sought to go before the court for a judgment based upon the scope of our powers, that of impeachment, and he indicated that any decision based upon enforceability of our subpoenas would necessarily involve a decision or a determination of what is an impeachable offense and all of the other attendant problems with it.

So, it seems to me once we do walk down this road, we do invite a judicial determination of our powers. And frankly, within the time frame that we have been dealing, I do not think we have enough time, and ought to get involved in that kind of litigation.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. May I just inquire of counsel, in addition to these other questions that have been raised, would it not be true too that the President could invoke the jurisdiction of the Court of Appeals with regard to this simply because of his interest, and that would put us into



the court in litigation with the President, which is something we have endeavored to avoid?

Would counsel respond to that?

Mr. JENNER. That is true, Congressman McClory.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, it seems once again to me that we are perhaps letting our timidity get the best of us. It seems to me that what we are going to do now is, we are going to go through the futile attempt of trying to subpoena some documents so where the person being subpoenaed has already indicated very clearly that he is not going to comply with our subpoena. Then we are going to be asked once again to infer a negative. We are going to be asked to develop a negative inference about the materials subpoenaed, a negative inference against the President, whereas we do have an opportunity to at least make an effort to get materials, and once again we are going to have a chance to make an effort to get materials that may very well be turned over to us.

And I just think you can talk about copouts, about going the route to court. My feeling is we do not submit, we obviously do not submit necessarily to the jurisdiction of the court by subpoenaing some materials that are in the hands of the court.

And I also feel that the gentleman that attributed some bad motives to the sponsor of the amendment is once again making a mistake, assuming things that he does not know at all. And I wish that we would at least, if we are against it because it is premature, that is one thing that I can understand and agree with many of the remarks of the gentleman from Texas, but in other words, it may be premature, or some people may feel that, but I hope that we do not rule out, if the President refuses to comply once again, I hope that we do not just summarily rule out the consideration of doing exactly what the gentleman is suggesting what we do today.

Mr. BROOKS. Would the gentleman yield?

Mr. RAILSBACK. I will be glad to yield to the gentleman from Alabama.

Mr. FLOWERS. I would agree with what my friend from Illinois says, and I fear that we are invoking a double standard here. I feel the argument could fairly forcibly be made that a Federal judge is no better than the President of the United States, and I do not know what we are setting ourselves up for if you take this thing to its logical extension.

If the material is relevant and necessary, as counsel has said, then I think we have got an obligation to pursue every possible avenue of obtaining that material. And failing to do that, I for one do not see how any adverse inference could be made against the President on this particular matter.

Mr. RAILSBACK. I yield to the gentleman from New York.

Mr. RANGEL. I share in the mover of this subpoena's concern that this committee should be getting information from wherever it is. The only reason at this time that I am prepared to support the motion to table is because I believe—like Mr. Flowers does—that the President and the court should be viewed in the same light. And since the letter had

been extended to the President to give us this material voluntarily, I might suggest, and would strongly support, a similar letter be sent to the court advising them that we want all materials that they may have.

Mr. FROELICH. Does the gentleman yield on that point?

Mr. RANGEL. I have not got the time. A letter on all of the materials that they have that might shed some light on our inquiry, and if they respond in the negative, or fail to respond at all, then I would certainly be prone to support a subpoena for such information.

Mr. BROOKS. Mr. Chairman?

Mr. FROELICH. Would the gentleman yield?

The CHAIRMAN. The gentleman from Illinois still has the time.

Mr. RAILSBACK. I would like to yield to the gentleman from Indiana.

Mr. DENNIS. Thank you, Mr. Railsback.

I simply wanted to observe that I concur with the legal conclusions of my distinguished friend from Texas. And it seems to me if we are sincere and serious about getting information, we ought to send our subpoenas wherever we have the legal power to send them. And when we are sending them to the President, and we know pretty well that he is not going to honor them because of past performance, and we have a judge that we do have a right to subpoena, and we have no right to assume that he will not honor them, that we have got the positive duty to try to subpoena him and see if we cannot actually get the information. And those who really want information who really want to have an effective subpoena, can hardly justify a motion to table on this motion of the gentleman from Texas.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Chairman. I agree with the position of the gentleman from Texas, Mr. Brooks.

I want to point out, however, that the judiciary, and I mean the courts by that, just as this Judiciary Committee is going through some very complex and difficult constitutional exercises at the present. I think a decent respect for those problems and the fact that they are apparently doing what they can to work them out, requires us to exercise a certain amount of restraint, to exercise or to grant some comity in this matter, and to defer any action at least for the time being with respect to issuing any subpoenas.

I recognize that our subpoena can be enforced against the courts, and the judges by means of impeachment. But, I also submit, who wants to do that at this particular time?

Mr. McCLODY. Would the gentleman yield?

Mr. DANIELSON. To do so would distract us, would deter us, would take us away from our primary responsibility. And I strongly urge that we do not follow this motion at the present time.

I am certainly going to support Mr. Brooks' motion to table, if and when that should come up. And I think our best judgment at this time, in this situation, is to follow the course that we have been pursuing, following the advice of our counsel and our own good judgment, and to stay away at the present time from such a drastic step as subpoenaing the courts.

And I yield to the gentleman from Ohio.

Mr. SEIBERLING. I would just like to clarify, since apparently my position was somewhat misunderstood from the gentleman from Illinois, Mr. Railsback. I do not for the minute take the position that we could not subpoena material in the hands of a judge or any other person in the Government.

But, when the President has the material, and we have already filed a subpoena, and we have not even received his response, it seems to me that this move is a bit transparent, and that is why I feel that it would embroil us.

Perhaps I should not say that it was done for the purpose of embroiling us, but it would embroil us unnecessarily with the courts, not with Judge Sirica, but the court of appeals.

Mr. HUNGATE. Will the gentleman yield to me?

Mr. DANIELSON. I yield to the gentleman.

The CHAIRMAN. Mr. Danielson has the time.

Mr. DANIELSON. I yield to Mr. Hungate.

Mr. HUNGATE. I thank the gentleman for yielding, and I ask unanimous consent to send my views to all members of the committee by mail, and I yield to the gentleman from Texas, Mr. Brooks.

Mr. BROOKS. I would like to renew my motion.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, I think the real issue before us is whether or not the purpose of our subpoena is to cause a confrontation with the President or to get information. If the purpose is to get information, then the motion offered by the gentleman from Wisconsin should be supported.

We have already had demonstrated to us the President's refusal to honor previous subpoenas, and there is not one person on this committee who dreams that the President is going to respond to these subpoenas.

Mr. SARBANES. Would the gentleman yield?

Mr. HOGAN. When I am finished.

Mr. SARBANES. Because I do dream that on occasion.

Mr. HOGAN. But the point is, do we want this information? Now, it has troubled me all along that the only subpoenas that we have ever tried to issue were to the President of the United States. But, there is material in the hands of private individuals which would help to clarify some of the issues that have been before the committee.

The dairy interest, the ITT, as well as the matter that I alluded to this morning. So, I think I agree with the gentleman from Alabama, who says that we are applying a double standard.

Now, we have repeatedly said that the separation of powers doctrine from which the President devised his claim of executive privilege falls when the matter is impeachment, and properly so. But it is totally inconsistent for us to say that one branch of the Federal Government does not have a claim to executive privilege under the impeachment inquiry, and yet the third branch does. I think that is totally inconsistent, and I urge that the motion by the gentleman from Wisconsin be supported.

Mr. McCLORY. Would the gentleman yield for a question?

Mr. HOGAN. I yield to the gentleman from Illinois.



Mr. McCLORY. Is it not true, counsel, that we have sent a letter to Judge Sirica requesting these tapes, and that he has refused to deliver them to us? This was a subject which was brought up by the gentleman from New York, Mr. Rangel, who said he was going to vote to table because we should send a letter first. We have already sent the letter; have we not?

Mr. JENNER. Congressman McClory, we have sent several letters to Judge Sirica, and he has been extremely, he has been extremely cooperative, except with respect to this segment of that particular tape. And his sole ground, his sole ground is that he does not have jurisdiction or power to do it because of the limited mandate of the court of appeals, and that is his only ground.

But, every other request this committee has made of Judge Sirica, he has responded to the letters of the chairman and been very helpful to this committee.

Mr. McCLORY. The only authority could come from the President or the court of appeals?

Mr. JENNER. That is correct.

Mr. HOGAN. Mr. Chairman, in the limited time remaining, I will reiterate what I said before. Where the matter is impeachment, the normal doctrine of the separation of powers must fall, so if this needs to be adjudicated, then it should be adjudicated. But, I would urge upon counsel consideration of issuing subpoenas to individuals other than the President of the United States where they might have information which would clarify some of the clarity issues before this committee.

The CHAIRMAN. The gentleman from Texas.

Mr. BROOKS. Mr. Chairman, I move to lay on the table the motion offered by the gentleman from Wisconsin.

Mr. FROELICH. Mr. Chairman?

The CHAIRMAN. The question is on the motion to lay on the table. All those in favor of the motion please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

Mr. FROELICH. Rollcall.

The CHAIRMAN. The ayes appear to have it. A rollcall is demanded and the clerk will call the roll. All those in favor of the motion, please say aye; all those opposed, no. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.  
 Mr. WALDIE. Aye.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. No.  
 The CLERK. Mr. Mann.  
 Mr. MANN. Aye.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. Aye.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. Aye.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. Aye.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. Aye.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. McCLODY. Aye, by proxy.  
 The CLERK. Mr. McClory.  
 Mr. McCLODY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 [No response.]  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. I vote no.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. DENNIS. No, by proxy.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. The clerk will report.

The CLERK. Twenty-three members have voted aye; 15 have voted no.

The CHAIRMAN. The motion is agreed to, and accordingly, it is laid on the table. I recognize the gentleman from South Carolina, Mr. Mann.

Mr. MANN. Mr. Chairman, I propose to offer a resolution covering the subject described in item 5 of the agenda with reference to the invitation to the President's counsel to respond to the initial evidentiary presentation. I think that copies of that resolution are on the desk of each member. If not, the clerk has some more to hand out.

Before presenting the formal motion of resolution, I would like to make two or three explanatory remarks. Now that the committee has completed its initial evidentiary presentation, and I must say that the counsel and the staff are to be highly commended for the manner in which they organized this very complex material, and the objective manner in which it was presented to us.

As we know, from the outset this committee has been concerned with treating the President through his counsel fairly, and to give him an opportunity to participate in each stage of the proceeding, and pursuant to that objective in the impeachment inquiry procedures which we have adopted, paragraph b(2), we provided the President's counsel shall be invited to respond to the presentation orally or in writing, as shall be determined by the committee.

Now, as you will see from the resolution, it is proposed that he make the same type of presentation as was made by the staff and committee counsel. The matters of additional witnesses, the matters of eventual brief or argument, will be reserved for later determination, both by the committee and with reference to the President's counsel. So with that explanation, Mr. Chairman, and pursuant to rule B-2 of the committee's procedures on the impeachment inquiry, I move the adoption of the following resolution.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. Mr. Chairman, I have looked over the motion which is presented by the gentleman from South Carolina. It seems to be consistent with the rules adopted by the committee, and I would just like to ask counsel whether they have consulted with Mr. St. Clair and that he understands the method of presentation and what his reaction is.



Mr. DOAR. Yes, Congressman McClory, I did consult with Mr. St. Clair, explained to him the nature of the response that the committee was considering adopting or authorizing him to make. He said that he thought that was a fair, satisfactory way to proceed and made no adverse comment whatsoever.

Mr. MANN. Will you also verify that he indicated that he can be ready by the time set in the resolution, which is 10 o'clock Thursday morning?

Mr. DOAR. I cannot verify positively. He said he would try to be ready by no later than 10 o'clock on Thursday, and if there was any difficulty, he would let me know. I have not heard from him.

Mr. McCLORY. Could I ask counsel another question?

It is my understanding that this initial presentation to be made by counsel for the President will be the factual presentation similar to kinds you made, statements of information supported by evidentiary material, documentary material that is before the committee, and that with regard to the adversary type of presentation, that he will have a right to make, that will come at a later time. In other words, it will come at a time following the time that we entertain the testimony of witnesses before the committee. Is that correct as far as our procedure is concerned?

Mr. DOAR. Well, Congressman McClory, I told him that with respect to that matter, that was a matter that the committee would decide, that they were not deciding at this time. So I did not speak for the committee with respect to the type of response, adversary response that might be considered at a later time. I did indicate that the committee had that fact in mind, and we did discuss the response that he proposed to submit and the fact that he would have to extract certain material from that and divide it. And I told him finally that in support of his statements of information, he would be entitled to cite SSC testimony, testimony from other congressional bodies, documentary evidence, and affidavits. And he wrote that all down.

Mr. McCLORY. In other words, he would not be foreclosed from this other adversary type of presentation, but that would be reserved for a later time for decision by the committee.

Mr. DOAR. That is what I told him.

Mr. LOTT. Would the gentleman yield?

Mr. MANN. Mr. Chairman, I think it would be well, even though members have copies before them, for the clerk to read the resolution for the record.

The CHAIRMAN. The clerk will read the resolution.

The CLERK [reading]:

Resolved, that the President's counsel be invited to respond in writing to the committee's initial evidentiary presentation. Such response shall be in the manner of the initial presentation before the committee in accord with rule A and may consist of information and evidentiary material, other than the testimony of witnesses, believed by the President's counsel to be pertinent to the inquiry. Counsel for the President shall be afforded an opportunity to supplement his written response with an oral presentation before the committee. Such presentation shall be in executive session and shall commence no later than 10 a.m., Thursday, June 27, 1974.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I think, Mr. Chairman, the motion seems perfectly fair, but there is one question, one open-ended question. That is, and either the gentleman from South Carolina or counsel can answer it, it states that the oral presentation shall commence no later than 10 o'clock, Thursday, June 27. It sets no time of termination. Could we have an idea of how long, inasmuch as we are confronted with a time problem, Counsel St. Clair will require to make that oral presentation? Because after all, the original presentation was weeks. Could we not assume that he could conclude either Thursday or Friday, so that this week, he would have concluded his presentation?

Mr. DOAR. I do not know whether or not you could assume that, but my impression was that that was what he intended.

The CHAIRMAN. Will the gentleman yield?

Mr. KASTENMEIER. Yes, I yield to my chairman.

The CHAIRMAN. Well, will not counsel advise the committee of the discussion he had with Mr. St. Clair, wherein he indicated the amount of time he thought he would take?

Mr. DOAR. That is what I said, that he thought it would be 1 or 2 days.

Mr. KASTENMEIER. So that under ordinary circumstances, we could hope to conclude hearing his presentation by the end of this week?

Mr. DOAR. That is correct.

Mr. LOTT. Will the gentleman yield for a question?

Mr. KASTENMEIER. I yield to the gentleman.

Mr. LOTT. First of all, I would like to commend the gentleman from South Carolina for drafting this motion. I think it is very fine.

I would like to emphasize, though, it is my impression that you do not wish to put any strict limitations on it, although as I understand, counsel for the President has indicated that this could probably be completed within 2 days. I would like you to comment on it.

Mr. MANN. That is why no limitation was put in the resolution. It was considered that a limitation might cause him to take longer than if we gave him a free hand?

Mr. LOTT. I thank the gentleman.

The CHAIRMAN. Would the gentleman yield further?

Mr. MANN. Yes.

Mr. KASTENMEIER. I have the time, Mr. Chairman. I will be happy to yield to you.

The CHAIRMAN. Thank you. Might I address this to the gentleman from South Carolina?

Is it contemplated within your motion, however, that the terms that are laid down in the impeachment inquiry procedures wherein counsel for the impeachment inquiry was confined to the presentation of information which was pertinent to the inquiry, that this be the same policy that would be followed by counsel for the President, and that he would adhere strictly to those procedures?

Mr. MANN. Yes, Mr. Chairman; and that is what was intended by the language, that such response shall be in the manner of the initial presentation. The initial presentation being referred to is that as given by staff and counsel to this date.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I have a couple of questions I would like to ask.

As I understand it, the presentation we are now talking about under the motion of the gentleman from South Carolina will be similar in form to that of counsel and will therefore be both written and/or oral if President's counsel so desires; is that correct?

Mr. MANN. Precisely—oral, of course, not implying argumentative, but a factual presentation orally.

Mr. DENNIS. He can make his factual presentation orally as well as in writing under this motion?

Mr. MANN. That is my intent.

Mr. DENNIS. The second question. The reference here to "other than the testimony of the witnesses," my understanding is that it is contemplated under our rules that at some appropriate time, the President's counsel will be accorded the opportunity to call witnesses and I assume that this language here in nowise precludes that, or in any way?

Mr. MANN. That is correct, and in that connection, I point to rule A of the procedures, the impeachment inquiry procedures, which employs that precise same language which prescribes the role of counsel and staff in making a presentation. It too included the language, "Other than presentation of the witnesses." So that is what is intended.

Mr. DENNIS. And I understand that the matter of witnesses, which might include both committee witnesses and Presidential witnesses, is on our agenda for tomorrow's meeting; is that correct?

The CHAIRMAN. If the gentleman is addressing the Chair——

Mr. DENNIS. I am addressing the Chair on that question.

The CHAIRMAN. I will state yes; and if the gentleman will yield for a moment only for clarification, the gentleman did state in his inquiry to the gentleman from South Carolina as to the calling of witnesses by President's counsel. It is contemplated that the President's counsel will have the right to make recommendations to the committee, but it still is going to be a matter for committee determination.

Mr. DENNIS. I understand that, Mr. Chairman, although I have also understood that both President's counsel and our counsel, if they asked for witnesses, would have a rather friendly hearing on that general point within reason, and I trust that continues to be true.

I have one further question I want to bring up and that is that this initial presentation, it says "shall be in executive session" and I take it that again, that does not preclude the question which will be discussed later, as I understand it, as to whether the past record should be made public and whether future testimony should be public. It is only this initial presentation at this time that we are now talking about on that score; is that correct?

Mr. MANN. At this time; correct.

Mr. DENNIS. And that matter is still open for consideration and will be considered further by the committee.

Is that correct, Mr. Chairman?

The CHAIRMAN. That is correct.

Mr. DENNIS. I thank both the gentlemen.

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. Mr. Chairman, I would like to ask the gentleman from South Carolina if his resolution contemplates that the committee



members will be bound during the presentation of the President's counsel in a similar manner that they were bound during the presentation of our counsel; that is, if we have questions to raise of the President's counsel, those questions must be for purposes of clarification only?

Mr. MANN. Absolutely, and you may be prepared to add, "and also to the rules of confidentiality."

Ms. JORDAN. Thank you.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. The Chair would like to state also, and call attention of the members that while we are in the process of considering this resolution, and the Chair has no objection, but the Chair would like to point out that we are, of course, superseding, in a sense, a rule that is laid down in B-2, where President's counsel shall be invited to respond to the presentation orally or in writing. It is not contemplated that it be in both oral and written. So I think that the rule, the resolution goes beyond the rule and I hope that the members are aware of this.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. There is one further point of clarification which you have partly clarified. Except as it is expressly set forth in the resolution, I understand it does not otherwise supersede the rules that we have been proceeding under so far.

The CHAIRMAN. That is correct.

Mr. SEIBERLING. Correct.

The CHAIRMAN. The question is on the motion of the gentleman from South Carolina; all those in favor, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[No response.]

The CHAIRMAN. The ayes have it. The motion is agreed to. The gentleman wanted to be recognized.

Mr. OWENS. Thank you, Mr. Chairman. I resisted offering my amendment based on conversations that I had with the chairman and with counsel. My understanding is that the chairman felt that he had the power to make the judgments which my amendment would have called for and therefore, on that representation, I resisted offering my amendment.

Mr. WALDIE. Will the gentleman yield?

Mr. OWENS. Yes; I yield to the gentleman from California.

Mr. WALDIE. I was fascinated by the gentleman's amendment and was in agreement with it. That is why I do not understand why you did not offer it. I wonder if your amendment will be possible in fact through rulings of the Chair.

Mr. OWENS. The amendment never was offered, I will say to the gentleman from California, because of representations made privately to me by the Chair to that effect.

Mr. WALDIE. I do not want to intrude into a private conversation. What I am trying to find out is if the amendment can be implemented by rulings of the Chair.

The CHAIRMAN. That is what I believe and I believe that had this amendment been offered, it might have appeared as an attempt to try

to circumscribe the President's counsel in a manner that was not intended when our counsel made his presentation before the committee. But I think that it is within the purview and the jurisdiction of the chairman to be able to implement that amendment.

Mr. WALDIE. I would hope so, because I do not think our counsel in any way was under similar—well, I hesitate to go any further because I do not know what your conversations were. So I will just not proceed.

Mr. WIGGINS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I am somewhat troubled by the assurances you may have given to our colleague from Utah. If President's counsel in his presentation is going to be limited to evidence as that word is understood in the law, admissible evidence, as distinguished from the kind of presentation which our counsel has made, which has relied upon secondary evidence, hearsay, copies, almost no restraints whatsoever. I hope it is not your intention to limit President's counsel to the fine rules of evidence when we have not so limited our own counsel in presenting the case.

The CHAIRMAN. No, the Chair merely was stating that the Chair did not intend to either enlarge upon the role of the counsel for the President nor to restrict him any more than the counsel for the committee was.

Mr. WALDIE. Well, Mr. Chairman, if the gentleman will yield.

Mr. WIGGINS. Yes.

Mr. WALDIE. In further pursuit of that information, if the counsel for the President were to argue in support of an evidentiary point edited transcripts as to which no original tapes have been submitted, though they are in possession of his client, would he be so permitted? Which was the thrust of Mr. Owens' amendment, as I understood it.

The CHAIRMAN. I think the question will have to be one that will be considered at the time and we do know that the transcripts, if referred to, will be the edited transcripts and not beyond that. I think that the committee members are aware of that.

Mr. WALDIE. Well, but as I understood Mr. Owens' proposal, it would be that Mr. St. Clair not be permitted to argue an evidentiary point from edited transcripts when the original tapes are in possession of the President and have been withheld by the President; that the best evidence is within the possession of his client and that he ought not to be able to profit from his client's wrongdoing in withholding that evidence from our subpoena. I gathered that was the thrust of his amendment and was a very worthwhile thrust.

Mr. OWENS. The gentleman from California is correct. The representation—I did not mean to indicate that the chairman had assured me that in all cases that would be his ruling, but the representation, I think, from the Chair would be that those matters could be and would be dealt with directly by the Chair as they become relevant and that certainly was, I think, the intent of the Chair.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. A point of clarification.

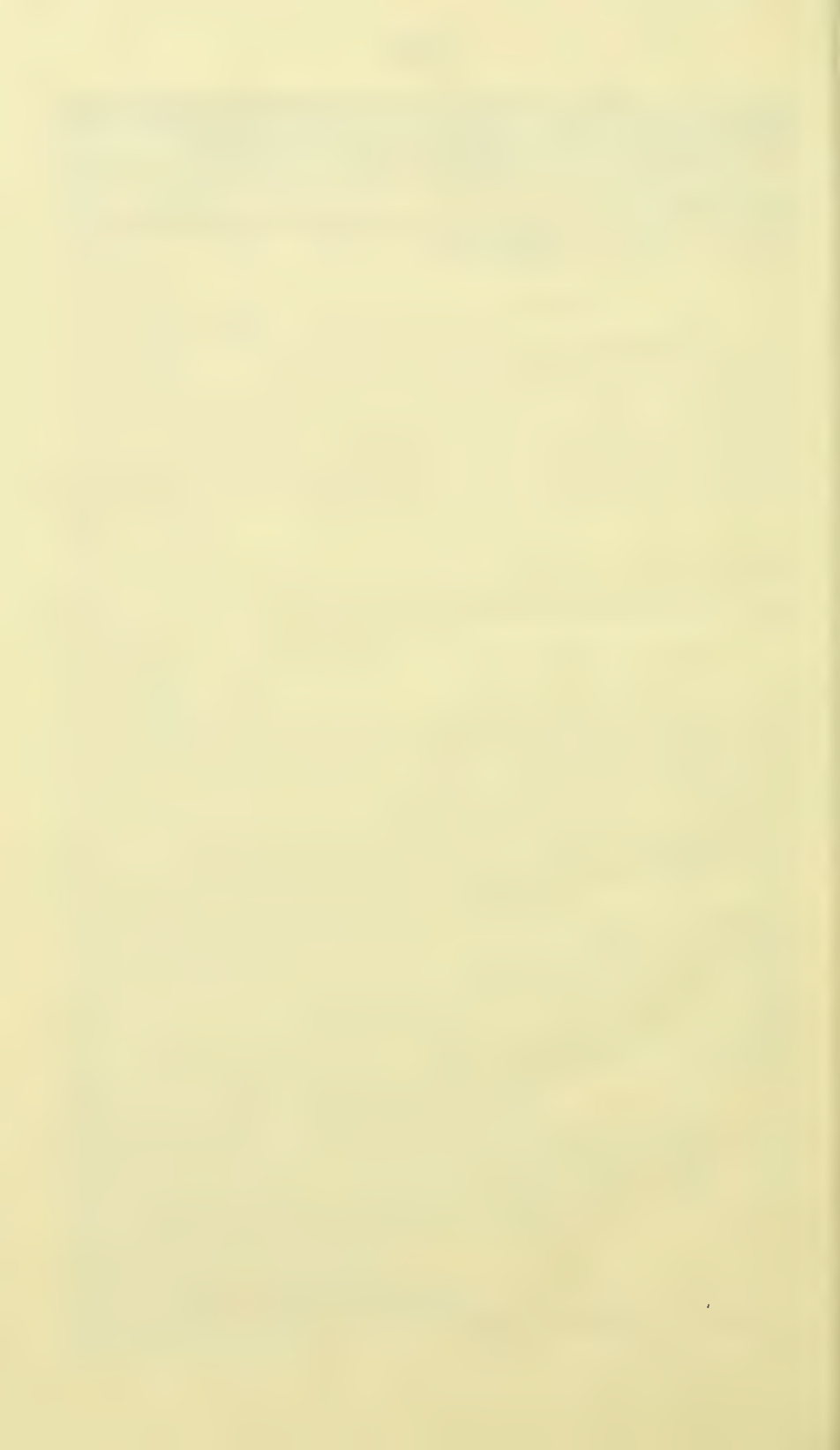
I can understand why we have not had a microphone at the desk of

Mr. St. Clair because under the rules, he was not permitted to participate. But can I anticipate that there will be a microphone so that we will all have the benefit of what Mr. St. Clair has to say?

The CHAIRMAN. The committee will stand adjourned until 10:30 tomorrow morning.

[Whereupon, at 3:10 p.m., the committee recessed to reconvene at 10:30 a.m., Tuesday, June 25, 1974.]





# IMPEACHMENT INQUIRY

## Business Meeting

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TUESDAY, JUNE 25, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:50 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Robert J. Trainor, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. We will come to order and the photographers and other live media will please leave the room. I recognize the gentleman from Iowa, Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman. I have a resolution at the desk which I would ask that the staff read.

The CHAIRMAN. The clerk will please read the resolution.

The CLERK [reading]:

Resolution by Mr. Mayne:

Resolved that the committee staff prepare a subpoena directed to the Clerk of the House of Representatives ordering him to make available to the staff for inspection and copying all records in his custody pertaining to campaign contributions received from the Trust of Political Education, Agricultural and Dairy Education Political Trust, and Trust for Special Political Agricultural Community Education during 1970, 1971, and prior to April 7, in 1972 by Members of the House who sponsored legislation during the spring of 1971 prior to March 25, to increase the milk support level to at least 85 percent of parity or who wrote, wired, or otherwise urged the Department of Agriculture or White House during the spring of 1971 prior to March 25, to so increase the milk support level.

The CHAIRMAN. The gentleman from Iowa.

Mr. MAYNE. Thank you, Mr. Chairman.

This resolution is made necessary by the fact that the Clerk of the House—as I have been informed by the chairman—has refused to

make available to the committee staff any records of campaign contributions from the three milk funds, TAPE, ADEPT, and SPACE for the period prior to April 7.

I believe that this is information which is relevant to our inquiry and should be obtained by subpoena to the Clerk.

Mr. DANIELSON. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. The gentleman from California.

Mr. DANIELSON. Mr. Chairman, I raise a point of order on the motion offered by the gentleman from Iowa, Mr. Mayne. Although it is an item listed on the agenda for today, I raise a point of order that it is not germane to the inquiry. We are operating under H. Res. 803, which authorizes this committee to investigate matters pertaining to the President of the United States. And the Clerk, under that resolution, would have no authority whatever to honor a request of this committee for materials pertaining to Members of Congress.

If we are proceeding under the authority of the House under H. Res. 803—which we are—and that is, in fact, our authority, then the gentleman's motion is not germane.

Mr. HUTCHINSON. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. The gentleman from Michigan.

Mr. HUTCHINSON. I make the point of order that the point of order comes too late. The Chair asked that the resolution be read, and then he recognized Mr. Mayne for discussion; that is to say, debate, and under the rules of the House, in order for a point of order to lie, that point of order shall have been reserved before Mr. Mayne was recognized.

Mr. DANIELSON. Well, Mr. Chairman, I was seeking to obtain the microphone, but somehow or other the electronics here are faulty, and I could not get the microphone until I did.

The CHAIRMAN. The Chair might advise the gentleman from Michigan that the point of order would, under normal circumstances, be sustained, but the gentleman from California had advised me, and the gentleman from Iowa understood the point of order was going to be raised. And I did notice that the gentleman from California was attempting to get the mike, and was unable to do so. And so I would—

Mr. HUTCHINSON. It would seem to me under those circumstances, Mr. Chairman, the chairman should immediately recognize the gentleman from California before he recognized the gentleman from Iowa, because as I say, certainly under every precedent of the House that I know anything about, the procedures of the House are very clear that under these circumstances the Speaker would rule that the point of order came too late.

Mr. DANIELSON. Mr. Chairman, I wish to respond in addition to my previously well-founded objection, I would like to point out that the resolution by Mr. Mayne, the gentleman from Iowa, had not been distributed, at least not to me, at the time I raised my point of order. Therefore, of course, I was without sufficient data to make it as precisely as is my custom.

The CHAIRMAN. Well, if the—

Mr. BROOKS. Mr. Chairman, would the gentleman yield?

The CHAIRMAN. If the gentleman insists, does the gentleman from Michigan insist on the point of order to the point of order?



Mr. HUTCHINSON. I do.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Would the gentleman yield just a moment? Might I suggest to my distinguished friend from California that if they do not want you to withhold your point of order until they have had an opportunity to discuss this rather foolish proposal, why don't you just make a motion to lay on the table the proposal of the gentleman from Iowa, and we will cease debate. We will vote on it right now and we will get on with the business of this committee.

Mr. DANIELSON. Well, my distinguished colleague from Texas, Mr. Brooks, has, as usual, raised an excellent point. And if the Chair will recognize me for the purpose, I do now make a motion to lay on the table the resolution of Mr. Mayne of Iowa.

Mr. BROOKS. Yes.

Mr. MAYNE. I ask for a record vote. If we are going to have that kind of a gag rule here, and a coverup, it will be a record vote and it may be funny to the gentleman from California, but it is not funny to the people of America to have these milk funds hidden except as to the President of the United States.

Mr. BROOKS. Regular order, Mr. Chairman. The question is on the motion.

The CHAIRMAN. The question is on the motion.

The Chair would like to state, however, before putting the question, that the Chair was prepared to recognize the gentleman after the gentleman from California would have reserved his point of order, for the purpose of having the gentleman from Iowa make his explanatory statement, and the Chair would have advised him accordingly.

But, in view of the fact that the gentleman from Michigan has insisted on the point of order, we will put the question on the motion to table.

And the question is on the motion to table, and all those in favor of the motion to table, please say aye.

[Chorus of "ayes."]

Mr. MAYNE. I have asked for a record vote, Mr. Chairman.

The CHAIRMAN. A record vote is demanded and the clerk will call the roll. All those in favor of the motion to table, please say aye; all those opposed, no.

Mr. MAYNE. I asked for a rollcall.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.  
 Mr. WALDIE. Aye.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. No.  
 The CLERK. Mr. Mann.  
 Mr. MANN. Aye.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. Aye.  
 The CLERK. Mr. Seiberling.  
 [No response.]  
 The CLERK. Mr. Seiberling.  
 [No response.]  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. Aye.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. MCCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 [No response.]  
 The CLERK. Mr. Hogan.  
 [No response.]  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.

[No response.]

The CLERK. Mr. Lott.

[No response.]

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTA. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

Mr. SEIBERLING. May I be recorded, Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. This vote is on the motion to table?

The CHAIRMAN. That is correct.

Mr. SEIBERLING. I vote aye.

The CLERK. Mr. Seiberling votes aye. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Fifteen members have voted aye, 21 members have voted no.

The CHAIRMAN. And the motion to table is not agreed to. The gentleman from Iowa.

Mr. MAYNE. Thank you, Mr. Chairman, for recognizing me to be heard on this point of order which I believe is now before the committee.

The CHAIRMAN. No, no. The motion of the gentleman is before us now.

Mr. MAYNE. How much time am I allotted, Mr. Chairman?

The CHAIRMAN. Five minutes.

Mr. MAYNE. Thank you, Mr. Chairman.

I think it is most unfortunate that an attempt should have been made to keep important and relevant evidence of milk fund payments from the record through the device of a point of order. This matter clearly deserves consideration on its merits.

The initial presentation of evidence by the staff shows that during the week before the President made the decision to raise the level of the milk support from 79 to 85 percent of parity, he was under intense pressure from Members of the House and Senate to do exactly that; 154 Congressmen and Senators introduced bills to mandate a support level of at least 85 percent of parity; 139 Congressmen and Senators wrote, telephoned or made personal calls to the Department of Agriculture or White House in support of such an increase.

It is indispensable to any fair and objective conduct of this inquiry that the committee have before it for its consideration all relevant evidence having a bearing on what may have motivated the President to make the decision to raise the support level, and also what may have motivated those members of the Congress who were urging him to do so.

The staff's presentation adequately presents evidence of campaign contributions made to the Committee for the Reelection of the President, but the committee does not yet have before it the best evidence



of each contribution to Members of the House and Senate who urged the support increase.

While records of the Clerk show that more than \$271,000 was contributed in 1972, after April 7, to Members who had urged the March 1971 action, the Clerk has refused to permit the examination of records of contributions from TAPE, ADEPT, and SPACE in 1970, 1971 or prior to April 7, 1972. Here the only information is from such sources as Common Cause, and the Citizens Research Foundation. These show campaign contributions to Members of Congress who urged the increase in 1971 of at least \$152,230 in 1970, and \$43,325 in 1971.

In the interest of accuracy and fair play, these figures should be checked against the official figures in the hands of the Clerk of the House to determine whether they are correct and complete. A subpoena should, therefore, be prepared ordering the Clerk to make these 1970, 1971, and pre-April 7, 1972, records available.

This committee cannot properly adopt a double standard of vigorously pursuing evidence of milk fund contributions to the President while ignoring contributions made at about the same time to Members of Congress who were pressing the President to take the action which he did.

If receipt of such contributions is to be seriously considered as a possible ground of impeachment, then in all fairness it must be considered against the relevant background that large contributions were also received by many Members of Congress from the same organizations.

It is essential to consider the entire circumstances under which these events took place. And this includes the fact that TAPE, ADEPT, and SPACE were urging Congressmen who took their money to introduce bills or otherwise influence the President toward the same objective of raising the price support to 85 percent of parity.

For the committee to fail to pursue and consider such evidence would in itself be a form of coverup.

The committee, the full House, and the American people are entitled to the full facts on all milk fund contributions during the relevant period, not just those contributions made to the Committee for the Re-election of the President. And I do not believe that there should be an attempt to sweep these facts under the rug through the technicality of a point of order. I urge all Members on both sides to make it possible for us to get accurate, complete figures from the Clerk so we will not have to rely on these other sources which might, inadvertently, be unfair to any Member.

We should have accurate and complete, full information on this very important subject, and this issuance of a subpoena as requested by my resolution will accomplish that purpose. Thank you, Mr. Chairman.

Mr. LATTA. Mr. Chairman?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. I would just like to state that while unfortunately a technicality in procedure that the gentleman from California's point of order may have come too late, that nonetheless, the motion of the gentleman is still not germane. And it cannot be germane despite the sustaining of the point of order.

I think that what is apparent here is there is in the motion, implicit in the motion, an attempt to inquire into matters that are not properly before this committee and cannot properly be before this committee under House Resolution 803, under which this committee is now operating, which authorizes this committee to investigate matters pertaining to the President. And the Clerk, under that resolution, would have no authority to honor a request of this committee for materials pertaining to Members of Congress.

And I would hope that we recognize that while the gentleman has every right, and the Chair accorded him that right to list this matter on the agenda, the Chair did inquire of the Clerk of the House, and the Chair did inquire of the Parliamentarian and was advised that according to the rules of the House, that this matter that is in the custody of the Clerk of the House is in the custody of the Clerk of the House for particular reasons, and that a good deal of this information could have been available to the gentleman from Iowa except for some detailed information that he sought which, I believe, is not all relevant or pertinent to this inquiry.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Might I argue this way: the burden and the task of this committee is to look into activities and influences upon the President of the United States. And the matter presented by Mr. Mayne's resolution is a matter, a matter of influence upon the President of the United States, and I think for that reason that the subject is germane to the inquiry of this committee.

And simply because we want to do a complete and full job, and we are perfectly willing to—we have listened to a lot of testimony about what some of the President's advisers have done among themselves, and it would seem to me, on the basis, of course, that it might have something to do with influencing the President of the United States, it seems to me as though this matter is equally a matter simply of influencing the President, and so I would suggest, submit that it is germane to the matter of our inquiry.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Mr. Chairman, I think there is a possibility of germaneness here, and I wonder if the gentleman would consider accepting an amendment to include information from the Clerk of the House as to financial disclosures of such items as officers, employees, directors, stockholders, and firms which have pled guilty to illegal campaign contributions, or subsidiaries, associates of ITT, which are under investigation? Would the gentleman consider accepting such an amendment?

Mr. MAYNE. Would the gentleman yield?

Mr. HUNGATE. Certainly.

Mr. MAYNE. It is not clear to me that records of the type the gentleman refers to would be on file with the Clerk of the House of Representatives unless they refer to a specific member of Congress. And I am not aware that that is the case.

Mr. HUNGATE. Then I can advise the gentleman——

Mr. MAYNE. I would not like to suggest——

Mr. HUNGATE. On my time I can advise the gentleman that the financial disclosures are filed with the Clerk of the House of all of the Members that are available. They have been published, last year's in the Congressional Quarterly, and someone had stock in American Airlines, and they pled guilty to illegal campaign contributions that had been revealed.

Mr. HUTCHINSON. Would the gentleman yield? Would the gentleman yield just for 1 minute?

Mr. HUNGATE. Briefly.

Mr. HUTCHINSON. The point is those disclosures are not filed with the Clerk of the House, they are filed with the Ethics Committee.

Mr. HUNGATE. Well, would the gentleman agree to amend to include the Ethics Committee reports? We are trying to get all things that could influence somebody.

Mr. MAYNE. Yes. Yes; I will happily accept anything that will bring more facts before this committee.

Mr. HUNGATE. I thank the gentleman.

Mr. MAYNE. And I do not say that facetiously.

Mr. HUNGATE. Mr. Chairman, I understood that. And I shall not yield further.

Mr. DANIELSON. Mr. Chairman?

Mr. HUNGATE. I am not done.

My friend is not a demagog. He never does anything halfway. And I can understand the excess of zeal in a cause one deeply believes to be right. I have heard this doggerel once, Mr. Chairman. I have heard it twice, and now I have heard it the third time. The cock has crowed and it's time to speak.

He has referred to colleagues on this committee and other colleagues in Congress as hypocrites. Well, I am not entitled to speak for anyone else, but we in Missouri proudly say, "I may be a horse's neck, but I am not a hypocrite." I would hope that the gentleman would withdraw or apologize for that remark, or failing that, at least ask to have the characterization deleted.

Another member of this committee has characterized these remarks in the vein of scurrilous. That term is too strong for me. I find it unpusillanimous persiflage. If he insists on characterizing distinguished members such as Les Arends, John Anderson, Bill Bray, Dave Dennis, Bob Michel, Harold Froehlich, Al Quie, Bill Scherle, Keith Sebelius, Governor Thompson, and Charlie Thone as those whose views can be influenced by campaign contributions, that is his privilege. But I resent it vigorously.

Now, I fear this situation has deliberately been rendered obtuse, and for this reason I would like to give an example to demonstrate clearly the difference between a legitimate campaign contribution and a bribe, a legal act and a criminal act.

How can you hear a case fairly when a co-op gave you campaign money and may have given someone else a bribe? It is the same co-op.

You go into a drugstore and you get some magazines and candy, and you go to the pharmacist with a prescription and get some drugs, and then you go to the cashier and you pay for it and leave.

Another fellow breaks into the drug store that night, grabs some magazines, grabs some candy, and without a prescription picks up



illicit drugs, and he is charged with burglary and you are called for jury duty. How can you sit on the jury when you both went to the same drugstore, got the same merchandise on the same day?

Well, it is pretty easy. You acted legally and he acted like a burglar. And there is no disqualification at all, and those who seek to confuse the public would confuse horse chestnuts with chestnut horses.

Now, I do not know that it is illegal to throw dust in the juryman's eye. Maybe not even immoral. But, it is not in the highest tradition of the bench or the bar or of this committee. Thank you, Mr. Chairman.

Mr. MAYNE. Mr. Chairman, I move the previous question.

The CHAIRMAN. I recognize the gentleman from Arkansas, Mr. Thornton.

Mr. THORNTON. Thank you.

Mr. HOGAN. Point of order, Mr. Chairman.

Mr. THORNTON. Thank you, Mr. Chairman.

Mr. HOGAN. Point of order. Did the gentleman from Missouri offer an amendment to the motion?

The CHAIRMAN. No; he did not offer an amendment to the motion.

Mr. HUNGATE. I will withdraw my amendment.

Mr. THORNTON. Thank you, Mr. Chairman. I do appreciate the opportunity to be heard briefly on this matter.

I think it is important for us to reflect a moment about what the purpose of our inquiry with regard to investigating contributions by the milk producers exactly was. It was not to determine how many campaign contributions were made to the President or to any Member of Congress. The question purely and simply was whether the promise of financial aid was in and of itself a factor in the President's decision on milk prices. And if so, whether that is an impeachable offense.

If it should be shown that the donations were a determining factor in the President's action, it does not really matter what other factors I might have considered. If some Members of Congress supported that action, whatever the reason for their decision, that would not relieve anyone from the requirements of law. As far as the President was concerned, the reasons for any Congressman's recommendation on milk prices was totally irrelevant.

In deciding whether the contributions were a factor, it might be useful to know how many Congressmen supported higher milk prices, and that information has been furnished. As to the reason that the Congressmen may have supported higher prices, if there is any suggestion that such support was wrong, we should remember that any member of this committee or any other committee in Congress who has failed to meet legal standards in accepting campaign contributions is fully subject to the process of law, and there is no necessity for an investigation by this committee.

The executive branch, through the Department of Justice and the judicial branch through the courts have ample means and full authority to investigate, convict, and punish any Member whose conduct falls below such legal standard, and there have been four such convictions in the past 5 years.

Also, the Constitution provides a Member may be expelled by two-thirds of the body in which he sits. Impeachment is not the

method of removing a person in office. In *re Chapin* 166 U.S. 61. It seems evident to direct the attention of this committee to the financial records of other Congressmen is outside the responsibility of our committee.

Now, since the suggestion by the gentleman from Iowa, Mr. Mayne, to produce these records cannot be grounded on a duty of this committee to review that material, the only remaining reason for seeking the information would be to establish that some Congressmen may have been motivated by contributions similar to those that we are inquiring into. If that is true, it is a cause for deep concern, but it is beyond our committee's power to correct it.

Omissions or mistakes by some among us do not lessen our duty to apply the standard of conduct implied by the Constitution and the law of this Congress. I cannot accept the argument because the Congress, the Department of Justice or the courts are not perfect institutions that we cannot sustain a system of laws. Such an argument certainly should carry no more weight here than in any other legal forum.

Just 2 weeks ago, Mr. Justice Rehnquist in the case of *Michigan against Tucker* said the following :

Just as the law does not require that a defendant receive a perfect trial, only a fair one, it cannot realistically require that policemen investigating serious crimes make no errors whatsoever. Rather than requiring perfection, our system is designed to tolerate mistakes and imperfections, and see that justice is done in spite of it.

This committee has absolutely no authority to substitute for the standards of law a standard based on the shortcomings of others, and neither are we authorized to investigate or judge the behavior of Members of Congress. We have a full and difficult assignment in performing our duty under the Constitution in this case, and we do not have authority to cure all of our Nation's ills.

For these reasons, I urge the defeat of this resolution, or support the ruling of the Chair that this is not germane to our committee's authority

The CHAIRMAN. The question is on the motion offered by the gentleman from Iowa.

All those in favor of the motion—

Mr. MAYNE. I ask for a rollcall vote, Mr. Chairman.

Mr. CHAIRMAN. Call of the roll is demanded. All those in favor of the motion, please say aye; all those opposed, no.

Mr. WALDIE. Is the motion on the previous question?

The CHAIRMAN. No; it is on the motion by the member from Iowa. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.  
 The CLERK. Mr. Conyers.  
 Mr. CONYERS. No.  
 The CLERK. Mr. Eilberg.  
 Mr. EILBERG. No.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. No.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. No.  
 The CLERK. Mr. Mann.  
 Mr. MANN. No.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. No.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. Aye.  
 The CLERK. Mr. Butler.



Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATT. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Seventeen members voted aye, 21 members voted no.

The CHAIRMAN. And the motion is not agreed to. The gentleman from California.

Mr. WALDIE. Mr. Chairman, it is my understanding that today on the agenda is consideration of releasing of materials that the committee has been considering over these many, many weeks. And I happen to persist in the view that all of the materials should be released, and I wish to argue at the appropriate point in time. But, I ask the chairman if we are not confronted with a sort of a catch 22 situation?

The materials that we seek to release are presently privileged by a rule of confidentiality, and when we discuss the matter of releasing those materials, will we not have to be in executive session to do that?

The CHAIRMAN. The gentleman is correct in that the material that was presented was presented under the caveat, under the rule which required that in the event the material was going to be presented, which might tend to defame or degrade, that that material would be developed or presented in closed session, and that, therefore, under rule 11. 27(o), the rule provides that no evidence or testimony taken in executive session may be released or used in public session without the consent of the committee. And I would interpret that rule to mean that if there were to be a discussion concerning the release of this material, that the use of it in public session would not be permissible unless the committee would consent to it, and that deliberation would have to be in closed session.

Mr. WALDIE. Well, Mr. Chairman, does it take a motion to resolve the committee into executive session?

The CHAIRMAN. Yes; it would.

Mr. WALDIE. Well, I so move, Mr. Chairman.

Ms. JORDAN. Mr. Chairman, before he puts that motion, before you put that motion I would like a question of clarification. If we do vote to go into executive session, is there anything which would prevent any member from stating publicly how he voted on the matter of releasing the materials and why, without going into the substance of the material?

The CHAIRMAN. There is no prohibition. As a matter of fact, should the matter come to a recorded rollcall vote, all those votes are made public.

Ms. JORDAN. Thank you, Mr. Chairman.

Mr. SEIBERLING. Mr. Chairman, parliamentary inquiry. Does the gentleman from California assert that he intends, or that it is inescapable that a discussion will take place on the substance of the materials that we are going to vote on? If not, I would suggest that until such time as somebody wishes to bring up some particular item of information, then it would be not in order to make such a motion.

The CHAIRMAN. The Chair would like to state that reference could be made to that material since this material is going to be referred to, and there is no way to escape from the prohibition of the rule.

Mr. SEIBERLING. Well, it seems to me, Mr. Chairman, that it is not inescapable that we have to refer to the material. We are going to discuss the principle of releasing the information, and I suggest that it is not necessary to get into the substance of the information in order to discuss that principle.

Mr. EDWARDS. Would you yield, John?

Mr. SEIBERLING. Yes, I yield.

Mr. EDWARDS. I think that we ought to make every effort to be public wherever possible, and where rules of the House and rules of privacy and due process are not involved. And I think that the gentleman from Ohio is making a very good point.

At the point at which confidential information might be disclosed, we could go into executive session at that time.

Mr. McCLORY. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, there will not be any effort or there will be no action taken with regard to closing hearings which are to be resumed next week at the time we have our closed session; will there?

The CHAIRMAN. No. This inquiry and the motion made pursuant to the inquiry does not relate to the hearing.

Mr. McCLORY. So the subject as to whether or not witnesses will be heard in open or closed session will be decided in public session?

The CHAIRMAN. No. That rule still prevails.

Mr. KASTENMEIER. Mr. Chairman?

Mr. McCLORY. In other words, you will not be taking up in our closed session the subject of open or closed hearings with regard to the witnesses, but at a later time the question of an open or closed hearing with regard to the taking of testimony of witnesses will be decided in a closed session, Mr. Chairman?

The CHAIRMAN. That will be an issue that will be decided. The question of witnesses is separate and apart from the initial presentation.

Mr. McCLORY. And that will be decided in open session?

The CHAIRMAN. Well, that will be a matter determined by the committee.

Mr. DENNIS. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, on that point, as well as the release, I would follow the view that we should try to have our discussions, if at all possible, in the open, since we are talking about release of material. And I would agree with Mr. Edwards and Mr. Seiberling that if there is any confidential material at that time, we may have to make that decision, because if we carry this, the agenda No. 2 will be in closed session, and the agenda No. 3 will have to be in closed session, because if we are going to talk about witnesses, that again would raise the question about confidentiality.

So, I am very concerned that, in fact, if we can discuss this matter, that the decision should be made in open so that all of the members have the opportunity to express themselves, as well as the opportunity to vote in the open rather than in a closed session. I do not like to see two out of the three items in a public business meeting held behind closed doors. I did not think that was the purpose of the agenda today.

Mr. DENNIS. Mr. Chairman?

Mr. KASTENMEIER. Would the gentleman from Iowa yield?

Mr. MEZVINSKY. Yes, I would be glad to yield.

Mr. KASTENMEIER. I too would like to speak in favor of the proposition as put by the gentleman from Ohio, Mr. Seiberling. This has been the subject of numerous caucuses I am sure on both sides, and in extended discussions of such, of this question, the question of materials per se, which would be revealed, has never come up; that is to say, nothing has been revealed in any discussions which would be excluded material or would require a closed session.

So, I suspect that this debate can, if there is one, can be pursued without specific references to items which would be covered by confidentiality.

Mr. McCLORY. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

Mr. McCLORY. Would the gentleman from Iowa yield to me?

Mr. MEZVINSKY. Yes, if I have any more time I will be glad to yield to the gentleman.

Mr. McCLORY. I would like to concur in the thought that I really see no reason why we need to go into closed session for the consideration of item No. 2. But, if we do, I want it to be limited to that, and I want us to open these hearings just as soon as we can, and certainly with regard to the hearing of witnesses unless there is objection on the part of the witnesses, and then I think they should be in open session.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

I do not think any member of this committee is a better certified exponent of public hearings than the gentleman from California, Mr. Waldie. He cannot be reproached on that subject. In my opinion, he has made a very sensible, practical, and almost necessary motion here, which I think we ought to vote on and adopt.

As a matter of honest fact, you cannot discuss this subject intelligently without getting into the subject matter involved. You would have to jump up and down here, opening and closing this meeting like the shutter of a camera if you get into that business, and as an actual



practical matter, the question of calling witnesses, this No. 2 matter of opening the record, are all bound up together, because if you are going to call witnesses in the open you have got a problem if the record is closed because they are going to be referring to the record.

We have got to talk this thing over, both branches of it in an executive session. And Mr. Waldie is just so right, and I am glad everybody has had a chance to make a speech, but I think we ought to vote for this motion right now.

The CHAIRMAN. The gentleman from California.

Mr. WALDIE. Mr. Chairman, I am overwhelmed by Mr. Dennis, so overwhelmed I want to withdraw my motion.

Mr. DENNIS. Mr. Chairman? Mr. Chairman, I am really desolated. I thought I was going to have one chance to agree with my friend.

Mr. LOTT. Mr. Chairman?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. The gentleman has withdrawn his motion.

Mr. HUNGATE. If my colleague from California is serious, I would be pleased to offer that motion and I would welcome the support of the gentleman from Indiana.

Mr. DENNIS. You have got it.

Mr. LOTT. Mr. Chairman?

The CHAIRMAN. Mr. Lott.

Mr. LOTT. In that connection, I would like to have the comments of counsel on this subject as to what their recommendations might be, or if they have any particular concerns or any comments that they would like to make on this. I think that would be very important in view of their dealings with these various matters.

The CHAIRMAN. Well, might I state to the gentleman that I think that this is not a matter for counsel to be able to pass upon. This is a matter that the committee members would have to judge in accordance with the rules of the House, and this is not the question of a legal opinion and concern with the law.

It is a question of the rules of the House which the Chair has interpreted, and, however, since the question is now not whether or not we act on the motion, and since the motion has been withdrawn—

Mr. HUNGATE. Well, Mr. Chairman?

The CHAIRMAN. We can go on with another subject.

Mr. HUNGATE. I have offered the motion, Mr. Chairman. I thought I was understood to have offered the motion and received support from Indiana.

The CHAIRMAN. Is the gentleman serious about offering the motion?

Mr. HUNGATE. Mr. Chairman, I have a problem convincing anyone, but I am serious.

Mr. OWENS. Question.

Mr. HUNGATE. Is the Chair requesting the gentleman from Missouri to withdraw his motion?

The CHAIRMAN. No; the Chair is not requesting the gentleman from Missouri to do anything other than that the Chair has called to the attention of the members the rule, and the rules of the House. Now, despite the fact that some of our members may feel as they

do regarding some of the material that may or may not come within the purview of the rule, the rule is as stated. I would hope that the members consider the basis on which this rule is founded, that where material has been developed in executive session, because it may have tended to defame or degrade, that same evidence or testimony which was taken in executive session may not be released or used in public session without the consent of the committee.

Mr. HUNGATE. Mr. Chairman, may I be recognized?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. May I inquire of the gentleman from Indiana if our legal ground is still firm, and if he still supports the motion?

Mr. DENNIS. So far as I am concerned, Mr. Hungate, I still support your motion. I think it is a sensible motion, and I do not see anything contrary to it in the rule that the chairman read.

Mr. McCLORY. Would the gentleman from Missouri yield?

Mr. HUNGATE. I yield to the gentleman from Illinois.

Mr. McCLORY. The question I have is this: I think the rule is applicable if we are going to be discussing in the course of entertaining this motion any sensitive material, any material that we took in executive session, if we are going into the specifics. However, it would seem to me that if there was no occasion to discuss the evidence itself, all we are going to discuss is the principle as to whether or not we are going to release evidence which relates to a particular subject or to a particular inquiry.

Mr. DENNIS. Would the gentleman yield?

Mr. McCLORY. Could you respond? Is there any occasion to discuss specific evidence?

Mr. HUNGATE. Well——

Mr. McCLORY. In the course of entertaining this motion?

Mr. HUNGATE. My experience with the learned 38 members of the committee is I never know what they will discuss. And I am not the one to say they should not discuss it. Is the gentleman from California seeking or asking me to yield?

Mr. WIGGINS. Yes. I wish to inform my colleague from Illinois and the rest of the members that I do intend to discuss the evidence on this motion.

Mr. HUNGATE. I thank the gentleman, and I stay with the motion on advice of counsel.

The CHAIRMAN. Is there any further discussion on the motion? Otherwise, the question is going to be on the motion. The question is on the motion offered by the gentleman from Missouri, Mr. Hungate, to go into executive session under the rules of the House, 27(o) and the committee is advised that the Chair is not able to ascertain if this motion should be defeated, and we should go into open session, whether or not any member will discuss the substance of the material.

Mr. HUNGATE. Mr. Wiggins indicated he would. Mr. Wiggins has indicated he will.

The CHAIRMAN. Under those circumstances, I think the committee certainly has further information to consider, and I would put the question on the motion.

And the motion is whether or not to go into executive session in the consideration of the possible release of the materials developed in executive session.

Mr. SEIBERLING. Mr. Chairman, parliamentary inquiry. I did not know that it is an inquiry, but I would just like to make a comment. since I am the one who raised the question on Mr. Waldie's original motion. My question was whether any person intended to discuss material that was received in executive session and since we have a statement now from Mr. Wiggins, at least, that he intends to do so, then my comment or my question has been answered and my position would be, in that case, we have no choice but to vote for executive session.

Mr. McCLORY. Parliamentary inquiry.

Mr. SEIBERLING. But I did not want to do it if there was no actual occasion to do so.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Parliamentary inquiry. As I understand the rule, there is not occasion for any motion. The Chair must rule that the rules of the House must be complied with. And in the face of Mr. Wiggins' suggestion that specific material would be discussed, I suggest that the motion should not be entertained, that the Chair should rule that we do not go into executive session.

Mr. EDWARDS. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. I yield to Mr. Edwards first.

Mr. EDWARDS. Well, thank you. Since it is the ruling of the Chair that matters of confidentiality will be discussed, then I think we have no choice but to go into executive session. However, I do so most reluctantly, because I think that the time that any member would be discussing matters that are confidential that we could go into executive session at that time. But, that is what Watergate, and that is what this hearing is all about, whether we comply with rules and laws and regulations, and certainly I am not going to be a part of any committee that violates the rules.

Mr. MEZVINSKY. Mr. Chairman, I just wanted to add that if we now make this decision, I think we had better understand the implication of it. I think the implication of the decision is that any matter that we take up and I think that would have to be item No. 3, the witnesses, that that too will have to be then done in executive session, because if we are going to have a discussion of the mere release of the material, and a person wants to discuss a matter that comes under the evidence, then I think we will have to apply these same standards to No. 3. I do not like that standard and I am very concerned that in all reality, every session that we are going to have now, until we are finally going to resolve the matter, as to the question of impeachment, may find itself behind a closed door.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. I might advise the member that if we should vote in closed session to release the material, then that rule will no longer obtain, since the material would have been released. However, the Chair must state that what the Chair is doing now is merely stating the rules of the House and no committee member or any committee can override or supersede the rules of the House.

Mr. MEZVINSKY. I certainly respect that, and I guess what I shall hope for is that we will release the material.

Mr. DRINAN. Mr. Chairman?



The CHAIRMAN. Father Drinan.

Mr. DRINAN. Let me read the exact rule, Mr. Chairman, and I think that we may be able to have a vote on this. As I read it, the relevant section O, says this: "No evidence or testimony taken in executive session may be released or used in public session without the consent of the committee." Would it be appropriate to have a vote in public on whether or not the committee wants to give its consent at this time to release for use in public session the testimony taken in executive session? Could we not ourselves rule on this rule by giving the consent of the committee to release or use in public session what we have learned in executive session?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. I would like to advise Father Drinan that before we get to that point the question will have to be on whether or not we are going to consider the release of that material and the consideration of the release of that material, which was developed in executive session, comes within the purview of rule 27-O and therefore the motion is a proper one. Now, whether my position is to release is something quite apart from this ruling and I think that those who are interested in releasing the material would do well to consider that we operate within the rules and, therefore, do not in any way violate the rules of the House so that in the event we do approve the publication or release of the materials that that motion, if adopted, would be inoperative, to use the word.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I just want to briefly concur with what you said and remind Father Drinan of Mr. Wiggin's admonition that he does intend to discuss evidence. I happen to favor the release of the materials to the public. But, I think we ought to get on with it, and, Mr. Chairman, you have the right, I think, as Mr. McClory has suggested, to do that on your own initiative.

Mr. McCLORY. If the gentleman will yield, may I suggest that the chairman declare that we are now in executive session?

The CHAIRMAN. The Chair does not possess that authority. The Chair states again that the Chair is operating within the rules of the House and wants to do only that which the committee permits him to do, and the House permits him to do. And I think it would be well if we acted on the motion which has been presented by the gentleman from Missouri.

Mr. KASTENMEIER. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. KASTENMEIER. Would it not be equally proper for the Chair to admonish members that they may not discuss in open session confidential materials; that is to say, foreclose Mr. Wiggins so long as we are in open session or any other member from revealing confidential materials? That is equally operative, it seems to me, as a policy decision. And should we, therefore, should the committee vote to open this session, that is to say to fail to go into executive session, turn down the motion by the gentleman from Missouri, in fact, members are foreclosed from discussing confidential materials and we are then, therefore relegated to discuss the matter only in terms of policy. And if someone desires to discuss confidential material at that time, he would

have to renew the request to go into executive session, so that he or she may do so. Are we not in that position, Mr. Chairman?

The CHAIRMAN. No. I regret to say that the Chair feels that any direction that he may give, or any ruling he makes, cannot supersede a rule of the House, which states that the committee, this would have to be with the consent of the committee. And I fail to see where I could, without in any way violating the rules of the House, and the possibility of taking action which might later be declared to be inoperative or a violation of the rules.

Mr. HUNGATE. Mr. Chairman?

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Mr. Chairman, it is with great fear and reluctance that I would cut off this stimulating debate, but I move the previous question.

The CHAIRMAN. The question is on the motion offered by the gentleman from Missouri.

All those in favor of the motion, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. Opposed?

[Chorus of "noes."]

Mr. WALDIE. Rollcall, Mr. Chairman.

The CHAIRMAN. A rollcall was demanded, and all those in favor please say aye and all those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Mrs. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye. The clerk will report the vote.

The CLERK. Twenty-four members have voted aye, 15 members have voted no.

The CHAIRMAN. And the motion is agreed to and the Chair will declare that the session will be closed. And will those who are not members of the committee or staff please leave the room.

[Short recess.]

[Whereupon at 11 :55 a.m. the committee went into executive session.]



# IMPEACHMENT INQUIRY

## Executive Session

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TUESDAY, JUNE 25, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 11:55 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Robert J. Trainor, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order. I recognize the gentleman from Utah.

Mr. OWENS. Mr. Chairman, I ask to be recognized for a series of motions.

The CHAIRMAN. The gentleman intends to offer his motions one at a time?

Mr. OWENS. That is right, Mr. Chairman. The motion to be recorded, I think the clerk will read the first.

This is entitled "To Release Executive Session Materials."

The CHAIRMAN. The clerk will report the motion.

The CLERK [reading]:

I move that the committee publish and upon publication release the information and evidentiary material presented to the committee in executive session, exclusive of classified material relating to the bombing of Cambodia. Such material shall include committee transcripts of recorded Presidential conversations with such deletions as have been agreed to by the chairman and ranking minority member.

Until the published materials are released, such materials shall be subject to the rules of confidentiality.

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Chairman, I think that the arguments to be made for this motion are quite obvious to the members. We have been talking about it individually and together for some time.

I think the big argument is simply that it is now timely. If there was justification for closing our hearings, and the committee decided by majority vote that there was, there is now justification, as we move to the final stages of our inquiry, there is justification that we make public the materials which have been presented to us and compiled by us during the initial investigatory phase. I think that the public has a right to know what is in these materials and if we desire public confidence in the ultimate judgment of this committee and public support for the ultimate decision, then I think we have to prepare the public with the materials which the staff have prepared for our use. I think there is no longer any reason for secrecy. The trial of Mr. Ehrlichman, I think, is to start tomorrow and presumably, the jury will be sequestered prior to the time that these materials can physically be published and released.

A great deal of the sensitive material, sensational material, has already leaked out and the rest will come out sooner or later and probably sooner anyway.

I think it is now important, as we prepare for the witnesses and as we prepare especially for the arguments, that these materials upon which we will base our arguments and our votes on any possible articles of impeachment, I think it essential that these materials be let out so the public has them as the background, so that they are aware of the matters upon which we will base our arguments and our decisions.

Mr. COHEN. Will the gentleman yield?

Mr. OWENS. Yes.

Mr. COHEN. I have two questions I would like to ask. You said it is now timely and the question of time is of great importance to this committee and to the courts. I notice there is no date specified in your motion. I do not think there should be, but perhaps we should have some understanding by the Chair and by the committee that this information should not be released until not only does the trial start of Ehrlichman: they have not empaneled a jury yet and I think it would be unwise for us to release it until the jury has been empaneled, as suggested by Judge Gesell.

Second. I do not think it goes quite far enough in excluding the matters about Cambodia. I am a little concerned about some of the information gathered by the FBI on the wiretaps about the personal lives of some of the reporters, as an example. I do not think that has any place in the public domain.

So with some modification, I can support your motion if it can be a little more restrictive.

Mr. OWENS. I have never been one who felt that the release of these materials could substantially prejudice the rights of Mr. Ehrlichman to a trial. Physically, as I said in my remarks, I am doubtful that the materials can be prepared, published, and released prior to the sequestering of the jury on the assumption that that will be done in the next 2 or 3 days anyway. I do think that they ought to be out very soon.

On the FBI wiretaps, based on articles in the newspapers over the last 10 days. I think it was Time or Newsweek which set forth by name in much greater detail information on those 17 "wiretapes," if

that is a term, much more in detail than what we have had, as I recall, available to this committee. So I am doubtful that that can be hurtful.

Mr. LOTT. Will the gentleman yield?

Mr. OWENS. Yes, I yield to the gentleman from Mississippi.

Mr. LOTT. I have two quick questions. I am inclined to support the gentleman's motion, too. I would like to ask—maybe we should direct this to counsel. Perhaps the gentleman from Utah can answer it.

Do we have executive session material from other legislative committees other than what would be included in this exclusion you have for the Senate Armed Services Committee? I just do not recall, but I think that is something I should be sure about.

Mr. OWENS. There are executive materials. I understand that we may release them. Maybe counsel could tell you on that.

Mr. DOAR. We have notified other committees with respect to the possibility that executive session testimony would be released and have not used any of the testimony except where there is that understanding. We would review that finally, but that is my understanding.

Mr. LOTT. All right, sir.

One other brief question: Are there other trials, other than the Ehrlichman trial, that might be in some way affected by the release of this material, other individuals whose rights might be in jeopardy, that you can think of?

Mr. DOAR. Well, the rule with respect to pretrial publicity is the impact it may have just prior to the time that the jury is selected. There are no other cases set for trial before September 9 at the earliest. So that the only trial that is now set in the next, prior to that time, is the Ehrlichman trial.

Mr. LOTT. Thank you.

The CHAIRMAN. The time of the gentleman has expired.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Chairman, I will not take long, because my views on this subject are well known. But I am speaking in opposition to the motion by the gentleman from Utah. I am suggesting that this committee must be scrupulous in our standards, that we must observe carefully the procedures and protect the reputations and rights of individuals, whether they are the subject under investigation, witnesses, or merely people, third parties, who are mentioned in the text of the evidence.

We must also observe the rights of the respondent. Just because he is the President of the United States does not mean that the ordinary rules of procedure may be abandoned.

Our job, as established in the resolution of the House, is to sift through the great mass of evidence and then to determine if there are any impeachable offenses. Then, if voted, to publish the bill of impeachment with all of the relevant evidence in support. This motion offered by the gentleman from Utah contemplates publishing all the information relevant or irrelevant, evidence that is defamatory and may or may not be supportive of any count in any bill of impeachment.



I cannot think of any procedure more unfair to the respondent and to third parties than to publish defamatory information that can prejudice the case against the respondent in advance, evidence that is totally irrelevant to any bill of impeachment.

In the Senate, if it were a court of law—and I understand that the rules of criminal evidence do apply in the Senate—the defense counsel could ask for a dismissal just on this ground alone. I would point out in closing, Mr. Chairman, that the precedent—and I think we should have some decent respect for the President—do not support the motion of the gentleman from Utah. In the Andrew Johnson trial, to my knowledge and the knowledge of staff members of the House Judiciary Committee, the evidence gathered by the House Judiciary Committee has never, to this day, been published.

In the Judge Spear impeachment, I quote the chairman. He said, "Evidence challenged on the material can be allowed in the record." But then the chairman said, "We will scrutinize it and if it is not material, we will not have it published." That is page 43.

And lastly, the only other precedent that I can find is, of course, in the impeachment inquiry of Mr. Justice Douglas by this committee just a couple of years ago. The select committee of the Judiciary Committee heard evidence, a great mass of evidence. By a vote of 3 to 1, it decided not to vote the report favorably a bill of impeachment to the full committee and to this day, that evidence has been sealed.

I therefore would urge a no vote on the motion.

Mr. THORNTON. Would the gentleman yield?

Mr. EDWARDS. Yes; I yield.

Mr. THORNTON. I would like to associate myself to the remarks of the gentleman from California. Thank you for yielding.

Mr. HUTCHINSON. Mr. Chairman?

The CHAIRMAN. The gentleman from Michigan, Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I want to say that I agree in substance with the position taken by the gentleman from California, Mr. Edwards. I think, however, that it would be most inappropriate and quite unfair if this committee should publish any materials until after Mr. St. Clair has been heard from and his response also included in such publication. Until that happens, it seems to me as though this is premature.

Mr. OWENS. Would the gentleman yield?

Mr. HUTCHINSON. Yes; I yield to the gentleman.

Mr. OWENS. I regret that in my opening remarks I did not make a point of that, but that is clearly the express intent, not just of the author of the amendment, but of the chairman, that the presentation of Mr. St. Clair will be made on Thursday and Friday, and the materials cannot be published before that time. While I do not intend to speak for the chairman, that clearly is the intent of the amendment.

Mr. HUTCHINSON. I am glad to have that assurance. I yield back the balance of my time.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. That was one point I wanted to ask of Mr. Owens, what about the inclusion of the St. Clair presentation material. I presume that that would be the Chair's intention, to publish it at the same time?

The CHAIRMAN. Although that matter is premature now, but that is the intention, that if there is to be an evidentiary presentation, it certainly would have to include the publication of the materials of Mr. St. Clair. I think that we could do no less.

Mr. FLOWERS. If this motion were carried, Mr. Chairman, would it be the Chair's intent to release the publication of all of the material at the same time?

The CHAIRMAN. That is correct, as it is printed.

Mr. FLOWERS. As it is printed?

The CHAIRMAN. That is correct.

Mr. FLOWERS. Is it contemplated that it will be printed in installments or part one week, part the next week? Over a period of how long?

The CHAIRMAN. Well, I do not know, frankly, what the physical problems are, what the logistics are, but it would seem to me that in the light of the way the resolution and the motion is drawn, that the material would be all the material.

Mr. FLOWERS. Well, I am a little confused, Mr. Chairman, about when it would be released. All material would be released simultaneously? Is that the Chair's ruling? We are talking about some 8,000 to 10,000 pages of material which would obviously be in different bound volumes, I would presume some being prepared—

The CHAIRMAN. This motion includes all of the material. Therefore, it would be that the material would be released upon publication, all of the material.

Mr. FLOWERS. Thank you, Mr. Chairman.

Mr. McCLORY. Would the gentleman yield?

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I want to make sure I understand my friend, Mr. Edwards, from California. In terms of his citing precedents, am I to understand that the precedent was the one that you cited during your remarks in opposition to this motion? Are there any others?

Mr. EDWARDS. I could only find three precedents where the Judiciary Committee either published all of the evidence or did not. In no case could I find a case—and they are very confusing, the cases themselves—where the Judiciary Committee followed the practice that is contemplated in the motion.

Mr. CONYERS. Well, that makes me feel a little bit better as one who supports the motion that the American people have a right to be advised of what we are doing. It seems to me that my friend's objection turns primarily around the Justice Douglas proceedings, which I presume is the most recent matter in his mind. I would not want to characterize that proceeding as having been one so differently motivated than the matter which brought us to this inquiry. But it does seem to me that reasonable men could draw a distinction between those two

matters and to support the nonrelease of the Douglas material and at the same time support the limited request in this motion—this is dealing with the materials relating to the bombing of Cambodia. I have heard no one argue that there is some national security matter involved. I have heard no one suggest that anyone would be defamed. I really heard nothing more than the notion that it might be contrary to precedent and we learn that the precedents are really in confusion.

So I think that the members would really be advised to consider the immediate circumstances of this impeachment inquiry and I hope support the gentleman from Utah's motion.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Sandman. Now we have got to go back to the House. I guess I would rather do this when we come back again, because I feel very strongly about this motion.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. There is a quorum call. The Chair will recess the committee until 1:45 p.m.

[Whereupon, at 12:10 p.m., the committee recessed, to reconvene at 1:45 p.m., this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. At the time the committee recessed, the gentleman from New Jersey had the floor, Mr. Sandman.

Mr. SANDMAN. Mr. Chairman, first of all, I want to associate myself with remarks made by the gentleman from California, Mr. Edwards, insofar as the rights of third parties are concerned, and all the other things he had to say which I think made sense.

Now, at the outset, why are we doing this? I think we should look into it a little more deeply.

First of all, I have yet to meet a member of this committee that does not feel that he should call the shots on this particular issue. I have not met a member of this committee that believes that he should in any way delegate his vote as to whether or not he is going to vote for impeachment to anyone, even his constituents. Now, to resort to a procedure where we are turning over all of the evidence we have to the public prior to making the decision, if we are to make the decision, I think is wrong. I cannot see it serving any possible purpose at all. Now, the only thing that is involved here—it is politically smart, sure it is, to say you want to release everything to everybody. But is it the right thing? I do not think it is.

The public has a right to know. Sure the public has a right to know. But when we finish our proceedings here, do we not make a record that becomes public? Does not the entire House have a right to see that entire record before they are asked to vote? Of course they do. Now, the vote of the member is reflected here in the record by the reasons that substantiate that particular vote. Every member who feels otherwise is going to have a right to vote in the negative. He is going to have a right to put his reasons why he voted that way.

Now, in my judgment, this constitutes what the public is entitled to know, what their elected representatives did and why they did it.



I just cannot see any justification for printing up some 800 pages of testimony, records, and whatnot. I do not believe it is in the best interest of everybody to turn open all of the files that we have in the Congressional Hotel. I think that is wrong.

What we have to do here—I think we have really done a good job up to now. I want to compliment the chairman and the staff and all the members. I think this has been done orderly. And I think we should try to end this job with judicial judgment as it should be done. We do not have to have any publicity by making it look like we are trying to give everybody every shred of evidence there is and some things that are not even evidence. I think it is wrong. I just cannot see any argument for it.

Now, if we talk about timeliness, what is timeliness? When did you ever hear of any deliberative body turning over all of its proceedings before it made a decision? I have never heard of that before, and why should this be an exception? This is not our purpose and I think we should continue in an orderly fashion.

Mr. SEIBERLING. Mr. Chairman?

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McCloidy.

Mr. McCLODY. Mr. Chairman, I have an amendment that I would like to propose. My amendment would strike the period after the word "Cambodia" in line 4 and the balance of that line, line 5, and line 6 through the word "conversations" and add in lieu thereof the word "and", so that it would read that the published information and evidentiary material "exclusive of the classified material relating to the bombing of Cambodia and with such deletions as have been agreed to by the chairman and ranking minority member."

Mr. Chairman, I move the adoption of that amendment.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, I would like to speak to the amendment and also to the basic resolution. I support the amendment as a perfecting effort, but frankly oppose the basic resolution and that resolution as amended. I think that it is a fundamental error which the committee should not take.

Mr. Chairman, our responsibility here is to assess the evidence with respect to whether the President has committed an impeachable offense. Our judgment should be based upon the law and on the facts related to the law. Our judgment must of necessity be rather private and, perhaps, even a prayerful consideration of the evidence in this case.

Now, what are the consequences of releasing that evidence in advance of a decision? It is evident to me, Mr. Chairman, that to do so would impact this committee with respect to public pressure, passions, prejudices. All of those factors are irrelevant to our task and indeed should be disregarded by us. Yet that is the inevitable consequence of a public release of the evidence in advance of a decision by this body.

Quite apart from that, Mr. Chairman, there are some considerations which have been expressed by my friend, Mr. Edwards, from California which cannot be taken lightly. This committee, if no other, should be particularly sensitive to due process considerations and that

is the subject addressed by Mr. Edwards of California. The due process considerations are not confined to the respondent in this case, but certainly no one can contend that he is not entitled to due process. There are third parties which are to be affected and affected, in my opinion, unnecessarily by the release of this evidence.

At this point, I would like to refer to just some of the evidence which can adversely affect third parties.

It is my understanding that at the present time, John Mitchell is under indictment and will be tried, it is expected, sometime in September on a criminal charge relating to this Watergate matter. On June 4, the President of the United States, out of his own mouth, speculated as to the guilt of Mr. Mitchell in that proceeding. Now, just consider the consequences to Mr. Mitchell's fair trial if that declaration by the President of the United States is made public. At several times, Mr. Chairman, the parties here in the evidence before us speculated as to theories of how the break-in occurred and who was responsible. Some of those parties are high people in the administration. How would it impact those individuals awaiting trial if significant figures were to speculate as to their guilt with respect to the Watergate matter immediately in advance of their trial?

Mr. RANGEL. Would the gentleman yield for a question?

Mr. WIGGINS. I will in just a moment. I am about through.

Without question, Mr. Chairman, the rights of those defendants are going to be prejudiced by such a full disclosure. Now, two points can be made about that. One is that the evidence in that respect is going to come out anyway when this matter goes to the House. I think that is not a necessary conclusion. There is a great deal here which relates, for example, to pre-break-in material which does not tie the President to any impeachable act so far as I have been able to discover and I have not heard much conversation around the table that the President knew by force of the evidence as to what happened before the Watergate. Yet we have plenty of evidence with respect to others involvement pre-Watergate on which they are going to be judged very soon in court.

Then a final point. Let us look at this in terms of the Presidential effect. I do not think this is the most important argument to be made, but it is worthy of consideration. Down the road, ladies and gentlemen, are other Congresses with other personalities and other parties in power. Those future personalities are going to look at the precedent of the release, the public release, of information developed during an impeachment inquiry. It certainly is not going to be lost on these future politicians that the name of the game may well be the investigation and not the impeachment; that under an abuse of the impeachment power, an enormous amount of information can be garnered overriding normal considerations of confidentiality and prerogatives and then released to the public, permitting, and I would regard it as, a gross abuse of the impeachment power. Let us not establish that precedent now. I think that the arguments for retaining control of this data until it must be released to the House in view, primarily, of the due process considerations are overriding and I would hope that there would be a no vote on the pending resolution.

The CHAIRMAN. The Chair will recess the committee until Members have voted. The vote is on Derwinski's substitute to maintain existing staff levels.

[Recess.]

The CHAIRMAN. At the time the committee recessed, the gentleman from California had just concluded his remarks.

Mr. RANGEL. Mr. Chairman?

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I would like to review some of the arguments that have been made in opposition to the motion and the amendment. I would like to point out that it is my position that the analogy to a grand jury that has been constantly made with reference to this motion is seriously in error. I think that it is really a quite fatal legal theory to assume that the House Judiciary Committee investigating on behalf of its parent body is to be compared to the legal proceedings of a grand jury in terms of the release of information. But even if it were, I think a very compelling argument could still be made in support of this motion and now the motion is amended.

Earlier, it was suggested that although there are no precedents directly on point, the more recent case of Justice Douglas was a basis for continuing the practice of not releasing information and I would like to differ from that view. In connection with the simple fact that in the *Justice Douglas* case, a Douglas lawyer requested, first of all, that these matters not be published. In this instant case, Mr. Nixon's lawyer has requested that they be released.

Second, the recommendations of the Judiciary Committee said that intensive investigation has not disclosed creditable evidence that would warrant the preparation of charges on any acceptable concept of an impeachable offense and therefore, the materials—the special subcommittee to the Judiciary in the Douglas matter—and there are, the materials were obviously not to be released because not only was there no impeachable theory to be found anywhere nor did the lawyer for Justice Douglas want it.

Mr. WIGGINS. Would the gentleman yield?

Mr. CONYERS. In just a moment.

Then we have heard the argument about the tendency and predisposition of the President to speculate on guilt or innocence, which I contend is completely immaterial to the action of this committee. The President has a well-known predilection for commenting on felony cases in advance and it is unfortunate that he continues that practice even when it involves former members of his own Cabinet. No one here has alleged a national security question and because ultimately, Mr. Chairman, there is no way that this committee can debate whether this will lead to the finalization of an article of impeachment in open session unless the materials are released in advance, I would urge the support of the McClory amendment.

Mr. WIGGINS. Would the gentleman yield?

Mr. CONYERS. Yes.

Mr. WIGGINS. Just briefly, in order to make the analogy to Douglas more perfect, we ought to consider the propriety of that panel releas-



ing the Douglas information in advance of its decision. The gentleman referred to the fact that it was not released after the decision and after a determination that there was no basis upon which to impeach the Justice. But think of the damage had the material been released in midstream. All of that material relating to his divorce and all the other material, how damaging that would be had that been done in advance of the committee's decision.

Mr. RANGEL. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I would like to direct some questions at Mr. Jenner if I might.

Mr. JENNER, is it my understanding that you and Mr. Dear have spoken with some of the judges that are necessarily concerned about confidentiality in these matters?

Mr. JENNER. Most of the conversations have been by me.

Mr. RAILSBACK. Am I correct that there is an awareness or a recognition on the part of some of the judges that some of these matters are soon going to have to come out anyway?

Mr. JENNER. That is true.

Mr. RAILSBACK. Was there an expression on their part that it might be better to have that information come out, say, 2 months in advance rather than a couple of weeks in advance or 3 weeks in advance of the trials?

Mr. JENNER. It was expressed in this fashion, that it is far more serious to have a sudden input and rush of materials on the eve of a trial than have it come out a couple of months ahead or earlier. The further back from the date of trial there is a release of material, the better it is—the less the impact upon the venire from which the petit jury will be selected and will enable the judge better to select a petit jury of unprejudiced jurors from the whole venire which is a cross-section of the community.

Mr. RAILSBACK. It is my understanding that if we were to hold up releasing the information at this time until such time as we were necessarily compelled to produce it for every single Member of the House, we might be talking about releasing this information 1 month from now. It seems to me in the light of what you have said, in the light of the leaks that have taken place which have on some occasions, anyway, selective leaks, the fact that Mr. St. Clair himself has argued persuasively that we should go public—in the light of all of the circumstances that have existed—the fact that this inquiry is of overriding, preemptive importance as far as any of these other trials are concerned, and the fact that it is my understanding our counsels are going to attempt to screen out insofar as possible nonrelevant materials, lead me to believe that we should support a motion to open up at this point. I hope that we will see fit to do so.

Mr. DENNIS. Will the gentleman yield?

Mr. RAILSBACK. I will be glad to yield.

Mr. DENNIS. I would like to ask counsel a question on the same lines.

Is it not true that we did have some understanding with the courts and the Special Prosecutor that the grand jury material was to be held confidential, at least for a period of time and to the extent that we could? What was the nature of that understanding?

MR. JENNER. Mr. Chairman, thank you.

Mr. Dennis, there was a direct understanding requested by Judge Gesell that the grand jury material that he afforded to the committee would not be made public until he had sequestered the jury in the *Ehrlichman* case, which starts to trial tomorrow. As you will recall, Mr. Dennis, you were present at the initial argument before Judge Sirica when both Mr. Doar and I, in urging favorable action by Judge Sirica on the grand jury presentation, we were at pains to say that the committee itself would make the decision as to when and how anything would be published and made public, but that we were confident the committee composed as it was of lawyers would be sensitive to the possible prejudice of any defendant in an on-coming trial. But we also stated, as you will recall, Mr. Dennis, that the impeachment inquiry was overriding and pervasive. It seems to me I particularly recall Mr. Doar saying that each judge had avenues of close examination of veniremen, but even if it should come to the unfortunate point that the court would decide he could not select an impartial jury at that time, then the remedy—perhaps not a remedy, but the judge might even reach the point at which he would dismiss that particular case, or he had another remedy in which it is possible to transfer the venue. But it was all in the context, as you will recall, Mr. Dennis, of Mr. Doar and I making clear to the court that it was possible that the committee at some stage, near or far, would make these materials public.

THE CHAIRMAN. The time of the gentleman from Illinois has expired, Mr. Rangel.

MR. RANGEL. Mr. Chairman, I would like to yield to Mr. Wiggins to give me his arguments for two questions that bother me.

First, Mr. Wiggins, you do not have a problem in understanding that eventually, in order to decide the question of the President's conduct, his appointees and their conduct, whether they go on trial or not, would eventually have to come before the House of Representatives?

And, two, in connection with your concern for the rights of these defendants that are or soon are to be going on trial, how do you express your concerns as they relate to the President himself releasing the so-called edited transcripts? I have not had the opportunity to get a comparison of our transcripts with those that were issued by the President, but I have studied the edited transcripts and I cannot see for the life of me how anything released by this committee could rehabilitate or more damage those people that were employed by the President.

MR. WIGGINS. If the gentleman will yield?

MR. RANGEL. I yield.

MR. WIGGINS. I learned personally of the proposed release of the Presidential transcript several hours in advance of the President's speech, and I expressed, in the strongest terms that I could, said that it was a mistake, that it was an error in judgment on somebody's part. I parenthetically add that I was not talking to the President at this time. I still believe, I think that it was a mistake, and I am not prepared to regulate my conduct on the basis of someone else's error.

MR. RANGEL. Mr. Wiggins, if I share with you that it was a mistake, my question is how can we do anything to remove that mistake,

or to further damage the people that were effected by what we shall call, for the sake of argument, a mistake?

Mr. WIGGINS. Well, I can think of several ways, but I want to make it clear that I do not wish to participate and to condone that kind of a blunderbuss disclosure of information impacting the rights of third parties. But, clearly, Mr. Rangel, quite apart from the Presidential submission, there is material before this committee which does adversely affect the rights of third parties.

Now, let me speak to the first question you raised, and that is the fact that ultimately this is going to have to be reported to the House and surely the House is entitled to know the facts of the case. I recognize that and agree. I would hope that this committee will make fully available to the House of Representatives all evidentiary material in support of any article of impeachment voted out by this committee, and all of the evidential material bearing upon minority position, which may be other articles or perhaps no articles. In other words, the House should be fully apprised of the reasons for this committee's action.

However, that is not to say that the House and the American people are entitled to have a full disclosure of material on which this committee or any member thereof relied. In that respect, the analogy is perfect to the Douglas situation where there was no basis upon which to report an article of impeachment and there was every reason to keep the evidentiary material secret.

Mr. RANGEL. I yield to the gentleman from California.

Mr. DANIELSON. Thank you for yielding.

Would the gentleman from California, Mr. Wiggins, please tell me that in the event that this committee should not return a bill of impeachment, is it the gentleman's position that in that event none of this evidentiary material should be made public?

Mr. WIGGINS. It would be my view that the committee should make a report, and that it should state in conclusionary language its conclusion and the reasons for it, with great sensitivity to the rights of third parties in terms of evidentiary material it uses to support it.

Mr. DANIELSON. I thank you for the answer, which is responsive, but I want to sharpen it just a little bit; namely, how would the American public, the American people in that event have any concept of how we arrived at our judgment that there was not sufficient evidence to support a bill of impeachment?

Mr. WIGGINS. Well, I can only say that they have that right, and they have a right to judge us on our actions, and perhaps their confidence in us. But, if there is no bill of impeachment, I do not concede the right of the American people to forage through evidentiary materials which are unpersuasive to this committee that the President ought to be impeached.

The CHAIRMAN. The time of the gentleman from New York has expired. Mr. Cohen.

Mr. COHEN. Mr. Chairman, I would like to ask Mr. McClory a question, if I could, and a point of clarification. When you strike out the words "shall include committee transcripts" I take it you do not mean to suggest that these will necessarily be excluded, but that they might very well be included within the discretion of the chairman and the ranking minority member?



Mr. McCLORY. If the gentleman will yield, I would say that the words "information and evidentiary materials," of course, includes the transcripts and all of the other evidence and materials that have been received by the committee so that what this is intended to do is to instead of just making the exclusionary matter limited to the bombing of Cambodia, it covers the entire record so that there is wider discretion given to the chairman and the ranking member.

Mr. COHEN. Thank you. I would like to ask the gentleman from Utah whether this amendment is acceptable to the gentleman?

Ms. HOLTZMAN. Would the gentleman yield?

Mr. COHEN. Yes, I yield.

Ms. HOLTZMAN. Along these lines, I was wondering whether we could get a clarification of any standards to be used in excluding material by the chairman and the ranking member under this formula?

Mr. COHEN. I would assume they would be the same standards that have been used to date as far as the exclusion of materials before the committee, and would not need to go into any detail about it.

Is the amendment acceptable to the gentleman from Utah?

Mr. OWENS. Yes. I have no problem with the amendment at all. It is broadening, and I think it would give a proper prerogative to the chairman and ranking Republican member and I would have no objection to it.

Mr. COHEN. In that case, Mr. Chairman, I would move the question.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Mr. Chairman, I had a horseback amendment here which I am going to withhold offering, pending a very, very limited discussion of a couple of things that I did not get clear before me. I am concerned, Mr. Wiggins, and I am persuaded you have got a good argument until I get up to the point where it has to be made public sometime, and I do not know any better time then when we reach a certain phase of these committee hearings.

Mr. Chairman, I am also concerned that we do not dribble this out piecemeal, that we do not let the Watergate aspect of it go first, and then a week later we let the milk aspect of it go, and then a week later the ITT aspect of it go, and then finally we let Mr. St. Clair's presentation go. I think that for the sake of fairness and for the sake of the dignity of this committee that the rational time for releasing it is when all of these preliminary presentations are in, which is when Mr. St. Clair gets through Friday afternoon.

Mr. DENNIS. Would the gentleman yield?

Mr. FLOWERS. Yes.

Mr. DENNIS. I thank the gentleman for yielding. And I have the same concern that he has about the point of release and the fact that at some time we all realize that there has got to be a public record on which we proceed and vote. My feeling is that point should come at the time we have concluded our hearings; in other words, when the evidence is in and before we take action thereon. And—

Mr. FLOWERS. That is the other aspect.

Mr. DENNIS. If the gentleman will permit, I intend to offer such an amendment later. That is the only reason I mentioned it.

Mr. FLOWERS. I think I am really looking for some assurances from the chairman and I hope they are forthcoming.

The CHAIRMAN. The Chair was ready to respond when you yielded to the gentleman.

Mr. FLOWERS. The other aspect of my two-pronged quiz, Mr. Chairman, is the evidentiary material that will be elicited on open examination, or however we do the examination of the witnesses, live witnesses, in this committee room. I presume that we would deal with that at the appropriate time?

The CHAIRMAN. That is correct.

Mr. FLOWERS. And that they would receive the same sort of attitude from the Chair as far as making it public as a part of this?

The CHAIRMAN. That is correct. And as the Chair has already assured the gentleman from Alabama, the material which is to be presented by Mr. St. Clair, counsel for the President, will be presented as we already have decided by resolution, in evidentiary manner, and that the Chair intends that that material is also to be published and printed. And while it is premature at this time, nonetheless, that is the intention.

Mr. FLOWERS. When would that get at issue, Mr. Chairman?

The CHAIRMAN. That would be immediately after the President's counsel has made his presentation.

Mr. SEIBERLING. Mr. Chairman?

Mr. FLOWERS. Well, then, it is contemplated there would be two publications or three publications, is that correct?

The CHAIRMAN. Well, his publication would be part of the total publication, but his would be separate and apart in that sense, that it is the counsel of the President who will be making the evidentiary presentation.

Mr. EDWARDS. Will the gentleman from Alabama yield?

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. I will yield to the gentleman from Alabama if he wants to finish.

Mr. FLOWERS. I am not sure I got what I was looking for, but I believe that is all I am going to get.

Mr. OWENS. Would the gentleman yield for a clarification?

Mr. SEIBERLING. I will yield to the gentleman.

Mr. OWENS. I think the decision was made, and I do not think I am putting words again in the chairman's mouth, but at the conclusion of Mr. St. Clair's presentation, that he would recognize again to move to open those hearings immediately, as we have done, those transcripts as we have done, and that would meet, I think, the concern of the gentleman from Alabama.

Mr. EDWARDS. Would the gentleman yield for a clarification?

Mr. SEIBERLING. I think the Chair has already made that point clear.

Mr. EDWARDS. Just for a clarification?

Mr. SEIBERLING. I will yield.

Mr. EDWARDS. Thank you.

Did the chairman mean to say that Mr. St. Clair's testimony will be released before ITT, the milk fund, the wiretapping, the income tax, and all of that? It would seem to me that the motion would preclude that, and it would be published after the other material is re-

leased in sequence, as it was brought before the committee, is that not correct?

The CHAIRMAN. Well, the material which the President's counsel will be presenting will be presented by the end of this week, and it will be timely then to consider a motion for the inclusion of that material in the publication of the materials that have been presented up until now to us.

Mr. EDWARDS. Yes, but it would be published after or at the same time as the items that I mentioned? In other words, you are not putting it ahead?

The CHAIRMAN. Of course not.

Mr. EDWARDS. Well then, it would be well down the road?

The CHAIRMAN. I do not know, as a matter of logistics, that it would be. It is included, and I think it will be part and parcel of the total evidentiary presentation.

Mr. HUTCHINSON. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman, if I may continue on my time, I would just like to make a few comments which seem to me to be appropriate.

First of all, it seems to me that this is the most crucial constitutional crisis that we have had in the memory of anybody on this committee. And to say that we should go to the American people with anything less than the full record that was considered in deciding what our decision is would be really a disservice to the people and to history. It seems to me that we have come to a reasonable solution, which is to release everything except those items that the chairman and the ranking minority member clearly feel are inappropriate or are irrelevant, and that is what I understood that provision to be. At the appropriate time, after we have finished with this particular amendment, I intend to offer an amendment which will further release some of this material. But, I just do not see how we could, how we can even argue intelligently the question of an impeachment resolution in public session without being able to discuss the evidence. And it seems to me that that is the absolute last point in time at which we could keep this material from the public.

And therefore I am going to support the motion and also the amendment of the gentleman from Illinois.

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I have been giving considerable thought to this because this is in the end, I think in the end, of course, all of this will become public and in the public domain and it is the question of timing. And it seems to me that the most sensible approach to the question of timing would be to make the material available when the record is complete.

In other words, I do not see how we can send out a complete record if we are going to call witnesses until after we also have the testimony of the witnesses. And for that reason, it seems to me as though I would not support the resolution at this time. I might, after our record is complete.

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. I would like to make it clear that I am going to vote against the motion of the gentleman from Utah for several reasons.



most of which have already been mentioned here as we have discussed the issue. I think that when we talk about public rights to know, we ought to think about what it is that the public is looking for from this committee. Is the public looking to this committee to refine the questions or to refine the answers? We do not have any answers.

When we talk about refining the evidence, by our own admission, we will not even call the statements of information we have heard evidence. And now, Mr. Chairman, I am willing to release any evidence which supports the conclusion of this committee, and we have made no conclusions. I would hope that the vote which is going to count on this committee is the vote as to whether we are going to propound given articles of impeachment against the President, and the evidence which supports that particular charge ought to be in the public domain.

But, if we were to release right now, as perhaps we will by vote of this committee, all of the material we have received, statements of information, what we are going to be doing is to tell the public that for 6 weeks we have been closeted here and we cannot refine the question. And that is not what they want. They want answers from us. And unless we are ready to provide answers and support those answers with the evidence, the evidence being whatever has been developed before this committee, whatever testimony comes from the witnesses, until we are prepared to do that, I would suggest that it would be premature for us to release this sort of unrelated, unrelated to any specific charge, information which this committee now has. So, as I view the issue, Mr. Chairman, it is whether we are going to define the question of whether we are going to define the answer. And I would suggest that the preeminent responsibility of this committee is to define and refine the answers.

Ms. HOLTZMAN. Mr. Chairman?

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. I will be very brief, Mr. Chairman, because Ms. Jordan and Mr. Wiggins have been more eloquent, but it did seem to me that the issue here of publication should be that of publishing that which is relevant to our decision, whether it is incriminating or whether it is relevant, because on the grounds that we do not find any reason for articles of impeachment and I did not see how you and the ranking Republican member should be called upon to make such deletions until the relevancy issue has been determined, which will be at the conclusion of our deliberations, and the preparation of our report.

Ms. HOLTZMAN. Mr. Chairman?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Thank you, Mr. Chairman. I support the amendment of the gentleman from Illinois and the motion of the gentleman from Utah.

It seems to me that most of the views on this question are rather thoughtfully and deeply held on both sides and I would entertain no hope of changing them. In fact, I respect them. I simply make my choice for going public with as much as we can as soon as we can. Good work is done in this committee, I think, and the House is not all lawyers and that may have been done on purpose. And we all know the saying, someone wrote it, that first we will kill all of the lawyers to

clean up the Government. Judges need not be lawyers in the colonies because the people thought they did not want all lawyers running their business, and the Supreme Court Judges need not be lawyers, and we are in secret session and we have even later testimony that lawyers could cause the downfall of the Government.

I simply think that this is a subject where all the Members of the House of Representatives and the representatives of the public, and the public's ultimate job is to judge the evidence and help guide us and I think that when we talk about incrimination that that just now does not follow my view of what an impeachment has to be based on. It may be what it has be based on the carry in the House, but I do not think you have to be incriminated to be impeached. And I simply think that it is well to let—this is the people's Government and I have full confidence in what they will do and I feel that as we try to keep things secret that we really do not, and we may do more damage through selected leaking.

Mr. SEIBERLING. Would the gentleman yield?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, Ms. Jordan and Mr. Fish have been far more eloquent in making the argument that I would have made. I will oppose the amendment of the gentleman from Utah.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman. I feel very strongly that the motion of the gentleman from Utah ought to prevail, and I say so for a number of reasons.

This committee in the first place has been charged with selective leaks, with playing politics with the evidence we have already received. If we put out the evidence in any way less than complete, I must say the committee is going to be charged with playing politics with the ultimate release of the evidence and I think that will be unfortunate, because the evidence has been presented in a very fair way. And I think that the public will respect the judgment we reach, because if we do not play games, and we are not secret, they will see that we have tried to arrive at a decision on our conscience based on a very full presentation of the evidence.

I do not think we will have to be ashamed of whatever conclusions we draw as a result of this presentation, and I think the public will respect our honesty in making it public.

Secondly, I do not understand the standard about publishing only material that supports a conclusion. What about those who do not agree with the conclusion that the committee arrives at? What about those who say that some material does not support an article of impeachment, contrary to a majority of the committee and are those members precluded from relying on that evidence, arguing on the basis of that evidence in public? What about those people who feel that the evidence supports an article of impeachment? Are they precluded from discussing that in public? And suppose some members feel that all of the evidence presented on a certain issue is relevant to the final conclusion; others feel that less is relevant? These are unmanageable standards for us, it seems to me, to protect the rights of all of the members of this committee, to debate what we have heard openly and to debate it fully, and to rely on the entire body of evidence,

either to exonerate or to incriminate the President, and it seems to me that this is fundamental to our final conclusion.

Mr. SEIBERLING. Would the gentlelady yield?

Ms. HOLTZMAN. I will be happy to yield to my friend from Indiana.

Mr. DENNIS. I thank the gentlewoman for yielding. I would like to say in response to her question, which is a very serious question, that in my thinking at the proper time, whenever that may be, and I personally think it is when we are through with the hearings, but when we do make things public, I think we would have to make everything public that any member thought was relevant and material, and the basis of his or her action. That is my feeling.

Ms. HOLTZMAN. I share that opinion. The problem is we could be debating here forever on what any member feels is relevant. It seems to me it is a more practical matter to rely on the chairman and the ranking minority member to deal with that problem. I think most practicably and expeditiously.

And secondly, I would just like to use the balance of my time——

Mr. DENNIS. Sure.

Ms. HOLTZMAN. The other issue with respect to prejudicing trials, which I think is a serious issue, obviously we take good care of the pending Erhlichman, Ellsberg trial at the present time by delaying any publication until that jury is sequestered, but the longer we delay publication of this material after that point, the more we raise the possibility of prejudging the United States versus Mitchell trial, which is going to start in September. So I think we ought to, if we are going to publish this material, the sooner we publish it, then we will be protecting the rights of the defendants in that other trial and that seems to me to be clear.

Thank you, Mr. Chairman.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, a lot has been said on both sides and I am really not going to be long. I just really want to make one point regarding the rights of third parties and the rights of the respondents. That legal argument was given, the right of the respondent, and Mr. Railsback made that clear in his comments with Mr. Jenner, the respondent that we all know, insofar as his counsel says open it up, that does differentiate from Douglas. It is very clear on the record that that is the case.

The other is the more practical, the more practical view on the third party, and it is true there have been leaks. It is true that there have been reports that have been damaging. And it is my contention that if we really want to protect the third parties, if we really want to protect those involved, it would be much better to have an accurate picture come forth from this committee daily or as far as our presentation is concerned, rather than to have an inaccurate picture coming piecemeal that can cause damage to any third party or any individuals.

So, for the reasons that have been given, which I do not have to expand on as to why it is in the public interest to disclose it, I think really it is in the interest of third parties and the respondents to have the information out where it is accurate, rather than to be caught



up in the real world which has allowed a very inaccurate picture in certain cases to come in front of the public.

Mr. McCLODY. Mr. Chairman, I move the previous question.

The CHAIRMAN. The question is.

Mr. McCLODY. On the amendment.

The CHAIRMAN. The question is on the motion of the gentleman from Utah as amended.

Mr. McCLODY. No. No. They have not adopted my amendment yet, the previous question on my amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois.

Mr. KASTENMEIER. Mr. Chairman, we do not have a written copy of that amendment. I wonder if either the gentleman from Illinois or a staff member could re-read the gentleman from Illinois amendment?

Mr. McCLODY. Would the clerk read the amendment?

The CLERK [reading]:

This is the amendment on the Owens motion.

On the fourth line, strike the period and insert a comma, delete the balance of line 4 through 6, including the word "conversations" and inserting in lieu thereof the word "and".

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois.

All those in favor of the amendment say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it.

Mr. DENNIS. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman, I have an amendment.

Mr. DENNIS. Now, Mr. Chairman, I have an amendment at the clerk's desk to the gentleman from Utah's motion.

Mr. CONYERS. Too late.

Mr. SEIBERLING. What do you mean, too late?

Mr. DENNIS. Well, the motion is still open to another amendment, is it not?

The CHAIRMAN. Yes, the motion is open to other amendments.

Mr. DENNIS. Well, I have an amendment pending, so before we put the motion——

The CHAIRMAN. The clerk will read the amendment of the gentleman from Indiana.

The CLERK [reading]:

Amendment offered by Mr. Dennis to the motion by Mr. Owens.

In line 1, after the word "committee" insert the following: "At the conclusion of its hearings, and when the committee is ready to report."

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, this amendment, the only change it makes is that the committee publish at the conclusion of its hearings and when the committee is ready to report. Now, that addresses itself I think to several things that have been said here before by Ms. Jordan particularly and by others. By Mr. Hutchinson, for example. I would like my colleagues to realize that like they I have thought very seriously

about this thing, because I think there are good reasons on both sides of this question. Obviously at some point we have to have a public record on which we can vote, and in a longer form of an amendment, which I had thought of giving, I had spelled out further by saying we publish the relevant portion and I wanted to try to keep it relevant. But, I left it to really every member to decide what was relevant, because that is important to us.

But, we should not be premature. Now, what Mr. Sandman said, what Mr. Edwards has said, what Mr. Wiggins has said, Ms. Jordan has said, and Mr. Fish said makes a lot of sense. We do not need to make this stuff public at this point. And in my judgment, we should not if we want to be halfway fair and decent to the civil rights of a whole lot of people which we have not any need to trifle with.

Now, I say when we finish the evidence, and I mean all of the evidence, the witnesses we are going to call, and we are ready to act, that is the time to publish. And my language, as I interpret it, and I guess as the author I have some right to interpret it, would mean that when we are ready to report, and that would include public debate here in the committee because I think we are ready to report when we get through with the hearings, and we have got to discuss it here, sure, and have it all as open as you want to, have it open in the House, but do not let us publish until the point when we are ready to do something. Why should we? Why should we drag it out and smear it around on people until we have to, and until there is a reason to, and until we are going to use it for the appropriate purpose for which we have got to use it.

Now, that is all this amendment does, and I do wish you would give it serious consideration.

It is hard for me to see, honestly, it is hard for me to see why anyone should really be opposed to this, as long as what they are interested in is our job, and not in doing something extraneous.

Mr. DANIELSON. Will the gentleman yield?

Mr. DENNIS. I will yield to the gentlelady from New York first.

Ms. HOLTZMAN. I thank my friend for yielding. The only question I had was, did you intend that by this amendment, to allow publication once the committee began to debate the question?

Mr. DENNIS. Right. As far as I am concerned, that is exactly what I want.

Ms. HOLTZMAN. I thank the gentleman.

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN. Mr. Sandman?

Mr. SANDMAN. I move the previous question.

The CHAIRMAN. On the amendment?

Mr. SANDMAN. On the amendment.

Mr. SEIBERLING. Parliamentary inquiry, Mr. Chairman. I am sorry that the gentleman moved the previous question, because it seems to me that the amendment is intrinsically unclear and I would like to ask the author of it what it means. It says "at the conclusion of its hearings and when the committee is ready to report."

Well, those are two different times. After the conclusion of the hearings, I presume we are then going to have a debate over what should be the decision of the committee, and we would not be able to report until we have voted on that.

Mr. DENNIS. Will the gentleman yield? If the gentleman from Missouri or New Jersey will indulge us both for a moment, and he seems to have indulged you——

Mr. SEIBERLING. Well, it is parliamentary inquiry, which I think is in order.

Mr. DENNIS. Well, may I respond to the gentleman's parliamentary inquiry, Mr. Chairman?

Mr. SEIBERLING. As to what the thing means.

Mr. DENNIS. Well, sure. In my judgment, as I said a minute ago, it means that when we are through hearing testimony, we go public. Now, if it worries anybody, I would be perfectly willing to strike out "and when the committee is ready to report," and say "at the conclusion of its hearings."

Mr. SEIBERLING. I think that would be an improvement.

Mr. DENNIS. I will accept that amendment, if anyone wants to offer it.

Mr. SEIBERLING. I will so offer the amendment to the amendment to strike the words "and when the committee is ready to report."

I ask unanimous consent.

Mr. DENNIS. That is what it means to my mind anyway.

The CHAIRMAN. The gentleman asked to defer a parliamentary inquiry.

Mr. SEIBERLING. Well, I will ask unanimous consent, Mr. Chairman, to delete the words "and when the committee is ready to report."

Mr. WIGGINS. Reserving the right to object, Mr. Chairman, I will not object on the theory that any perfecting of a bad idea is better than nothing. But it is still fatal. It still requires a public presentation of the evidentiary material that is in advance of our decision. And I would hope that all members here would make that decision absent the kind of pressure that is going to be put on us as soon as this material goes public.

Mr. SEIBERLING. Does the gentleman object?

Mr. MANN. Mr. Chairman?

Mr. DONOHUE. Mr. Chairman?

The CHAIRMAN. The previous question has been moved on the amendment.

Mr. DONOHUE. Would the gentleman from New Jersey withhold that until I pose a question?

Mr. SANDMAN. Yes.

Mr. DONOHUE. What I would like to inquire of you, Mr. Chairman, or any one of the members of this committee, is there any precedent for us publishing hearings before we have completed them?

The CHAIRMAN. I do not know that there has not been any precedent.

Mr. DONOHUE. I have been around a few years and I never recall any publication of hearings before any committee until such time as the hearings were completed.

The CHAIRMAN. The presentation of the committee at this time has been completed and there have been numerous instances where transcripts have been published and made available to the members.

Mr. DONOHUE. Well, I want to say this, I cannot recall any.

The CHAIRMAN. Well, the Chair will have to get you some.



Mr. DONOHUE. Now, when might you be able to furnish one to me, Mr. Chairman?

The CHAIRMAN. Well——

Mr. HUNGATE. Mr. Chairman, would the gentleman from New Jersey withhold for just a short—it might be appropriate and it may not be, and certainly no one here is referred to in this, but the difficulty over the language and its interpretation is similar to one of the stories about a gentleman speaking on the floor of the House under the 5-minute rule. And he got done with the 5-minute rule, and he got a unanimous consent for another 5 minutes. And he sought unanimous consent for another one, and one fellow that really did not like him anyway objected and he said: "Reserving the right to object," he said, "I have heard the gentleman talking down there now for 10 minutes and I just would like for him to tell me whether he is for or against this legislation." And the other fellow looked up and said: "Well, I am glad you asked that question, the distinguished gentleman, because I remember the day he came down here and came through those doors and he stood before the Speaker and he raised his hand and took the oath of office, and I pointed to him then and I said, now, there is a man that no matter how long he is here, he will never know what is going on."

The CHAIRMAN. The question is on the amendment of the gentleman from Indiana.

All those in favor of the amendment please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. DENNIS. Mr. Chairman, I will ask for a rollcall.

The CHAIRMAN. Does the gentleman demand a rollcall?

Mr. DENNIS. Uh, huh.

The CHAIRMAN. The clerk will call the roll, and those in favor of the amendment offered by Mr. Dennis, please say aye, and all those opposed, no.

Mr. MANN. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. Mr. Mann.

Mr. MANN. Are the words after the word "hearing" stricken from the proposed amendment?

Mr. DENNIS. Right. I understand they were.

Mr. SEIBERLING. I am unclear as to what happened on that.

Mr. DENNIS. "At the conclusion of its hearings," you asked unanimous consent and nobody objected.

Mr. SEIBERLING. But I do not know what the chairman's ruling was. I am under the impression——

The CHAIRMAN. There was no objection, so that was amended.

Mr. SEIBERLING. Fine. All right.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.  
 The CLERK. Mr. Hungate.  
 Mr. HUNGATE. No.  
 The CLERK. Mr. Conyers.  
 Mr. CONYERS. No.  
 The CLERK. Mr. Eilberg.  
 Mr. EILBERG. No.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. No.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. Aye.  
 The CLERK. Mr. Mann.  
 Mr. MANN. Aye.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. No.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. Aye.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTSMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. The clerk is in doubt.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTI. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman.

The CHAIRMAN. The clerk will report.

The CLERK. Seventeen members have voted aye, 21 members have voted no.

The CHAIRMAN. And the amendment is not agreed to.

Mr. McCLORY. I move the previous question.

The CHAIRMAN. The question now occurs on the motion of the gentleman from Utah, as amended by the gentleman from Illinois.

All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

Mr. KASTENMEIER. Recorded vote.

The CHAIRMAN. And a recorded vote is demanded and the clerk will call the roll. All those in favor please say aye and all those opposed, no.

The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.



Mr. FLOWERS. No.  
 The CLERK. Mr. Mann.  
 Mr. MANN. No.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. Aye.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. Aye.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. Aye.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. No.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report the vote.

The CLERK. Twenty-two members have voted aye, 16 members have voted no.

The CHAIRMAN. And the motion is agreed to.

Mr. WIGGINS. Mr. Chairman, may I inquire of the Chair as to what the contemplated course of action for the balance of the day is as of this moment?

The CHAIRMAN. The Chair has listed on the agenda the item concerning the calling of witnesses for the impeachment inquiry. However, the Chair was going to recess or rather adjourn the meeting until tomorrow morning and pick up that item tomorrow morning.

Mr. WIGGINS. Mr. Chairman, if the members will indulge me a comment, which I think must be made in an executive session, and I do not frankly expect all of the members to agree with me, but I feel like I must make this statement in executive session.

Tomorrow I am going to offer an amendment, a copy of which has been circulated, dealing with written interrogatories to the President. I am fully aware that that is an opportunity to discuss the personal appearance of the President before this committee and perhaps members would wish to debate that. But, I do urge some restraint in the interest of justice in the debate on the question. It would be, in my opinion, perhaps grounds for a mistrial if the prosecutor should challenge a defendant to go up to the stand and tell his story. It is the kind of thing that is a right in the defendant to be exercised privately without being challenged. And I would hope that tomorrow as we debate this motion that members would exercise that kind of judicious restraint and would not make statements which, in effect, say Mr. President, if you have anything to say, come and you are not afraid to say it, come down before this committee and raise your right hand.

Mr. HUNGATE. Would the gentleman yield briefly?

Mr. WIGGINS. Sure.

Mr. HUNGATE. I would like to inquire if the gentleman would consider the initial request for interrogatories the same ones that were put by the Joint Committee on Internal Revenue Taxation or whatever it is to which no reply was received? Maybe we could get an agreement to send those interrogatories up there and see if they would be answered and if they are answered, why we would go from there.

Mr. WIGGINS. I would have no objection at all. Indeed, the amendment as originally drafted by me was confined to a particular aspect of the case, but I amended it so as to open up any area of the case including that.

Mr. HUNGATE. I would be inclined, I mean if they are initially confined to the exact interrogatories as have been sent by the Joint Committee on Taxation, I think it would be an appropriate thing for this committee to do in that area.

Mr. WIGGINS. Well, we can debate that tomorrow, and that is a proper subject to debate in open session. But, I am sensitive to the propriety of making a demand upon a respondent to come and testify, which could put an unconscionable burden on him, one he should not be compelled to bear.

Mr. CONYERS. Mr. Chairman?

Mr. SEIBERLING. Would the gentleman yield?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Might I be recognized to add a comment in total disagreement to the gentleman from California?

I appreciate his advising us about restraining ourselves, but there are those on this committee that may have a completely and totally different interpretation of the meaning of this, and have no intention whatsoever to consider themselves to be restrained, at the gentleman's invitation.

We can go into executive session——

Mr. WIGGINS. I would only invite.

Mr. CONYERS [continuing]. If there is something of such sensitive nature, but there are other theories that are as perfectly valid as those of the gentleman from California.

Mr. SEIBERLING. Will the gentleman yield?

Mr. CONYERS. Yes, I yield.

Mr. SEIBERLING. I just wonder if I could ask the gentleman from California, Mr. Wiggins, whether he makes a distinction between a demand and an invitation? It seems to me that one other alternative would be simply to invite the President, and then it would be his choice as to what he would like to do.

Mr. WIGGINS. Well, I think it is appropriate that the President be invited to do whatever he wishes. But, I personally think that the right way to do that is for the chairman, or perhaps through our counsel to extend that invitation privately to the counsel for the President, without making a public invitation, which carries with it——

Mr. SEIBERLING. I would say——

Mr. HUNGATE. Would the gentleman yield?

Mr. BROOKS. Will the gentleman yield? Mr. Wiggins?

Mr. CONYERS. I yield.

Mr. HUNGATE. I have been yielded to, Mr. Chairman. Let me briefly say to the gentleman from California——

Mr. CONYERS. Mr. Chairman, I yield to the gentleman from Missouri.

The CHAIRMAN. The gentleman from Missouri.

Mr. HUNGATE. Thank you, Mr. Chairman. I would say to the gentleman from California I would simply like to see us agree if we can and act expeditiously if we can, and for that reason I would urge him to consider, if it does not impinge on what he wants to do, offering in the initial instance the exact interrogatories that have been offered by the Joint Committee on Taxation and I would think this committee ought to support that wholeheartedly. And after we see what goes with that, if that is taken care of, we could then proceed to the other point.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I wanted to make one observation in response to Mr. Wiggins' comments. At the advisory meeting yesterday, I would



remind him that I specifically pointed out that if the President were to appear before this committee it would be on his own volition and that the Congress, this committee would not urge him to do so, would not pressure him to do so, but would tell him if he wanted to he would be welcome. And I pointed out then that we would not, I did not recommend any public statements about inviting him where there would be any pressure of a public invite and I just wanted you to know that your statement that this committee would demand his presence is just really not very responsive to what my idea was or what the idea was of anybody at that advisory meeting, and not anybody on this committee that I have heard except you.

Mr. WIGGINS. Well—

Mr. BROOKS. I want to make that crystal clear.

Mr. WIGGINS. OK. I do not wish to suggest even that the committee would do as I cautioned the members not to do. I do not suggest that. I merely am talking about something that is rather sensitive and it is the kind of statement that I feel like I have to make in executive session.

I simply urge restraint on the part of the members, that is all.

Mr. SARBANES. Well, would the gentleman yield for a second?

Mr. WIGGINS. Of course.

Mr. SARBANES. I have to confess that I am not really quite clear on the point that the gentleman is making. I mean, I understand that you are going to offer a motion tomorrow with respect to the furnishing of interrogatories. And do I understand that you are cautioning members of the committee not to make some argument of some sort with respect to that motion?

Mr. WIGGINS. No. No.

Mr. SARBANES. Which you think they should not do, is that correct?

Mr. WIGGINS. No, that is not correct.

Mr. SARBANES. What is the point the gentleman is making?

Mr. WIGGINS. I am simply anticipating that any motion which goes on the obtaining of evidence from the President is likely to precipitate a debate that the President himself should set down before the committee and offer evidence in person, as distinguished from interrogatories and I think that lends itself to a prejudice which we ought not to indulge in.

Mr. SARBANES. Well, with all due respect, I do not know that I would offer that argument, but it seems to me pertinent to the motion that the question is put forth, and if you are going to come forth with that motion, I do not see how anyone who thinks that that point of view is pertinent to dispose of that motion should be somehow precluded from a discussion this morning, or I mean this afternoon, from raising that point.

Mr. WIGGINS. Well, obviously, my friend, I can only say this, that I cannot forestall any member from saying whatever he thinks is appropriate. I merely am expressing my concern, and it is the kind of concern ought to be expressed in an executive session. You, of course, are free to do as you wish.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, may I inquire what the status of the rules of confidentiality are now, after the adoption of that resolution today? Are they still in effect?

The CHAIRMAN. The motion, as you know, that we adopted, stated that the rules of confidentiality still obtain until the publication.

Mr. HOGAN. With that in mind, Mr. Chairman, I assume that tomorrow's session will be open?

The CHAIRMAN. Tomorrow's session will be an open session unless the committee decides otherwise. As the committee members know, this session was closed for one item, on the motion that was specifically addressed to the question of a possible release of executive session materials.

Mr. DENNIS. Mr. Chairman?

Mr. HOGAN. I intend to offer my motion tomorrow, Mr. Chairman, which may or may not—well, I can probably rephrase it in such a way that it would not violate the rules of confidentiality. But, to make it clear, I am sure that the members of the committee will have to refer back to it, and I think I can maybe handle it that way, but how I prepare it depends on whether we are opened or closed?

Mr. WALDIE. Mr. Chairman?

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Very briefly, and without beating a dead horse in terms of the issue. I think the gentleman from California, Mr. Wiggins, should be put on notice that his motion in and of itself necessarily introduces the question of obtaining evidence from the President, and in so doing, he is necessarily bringing into play the question of whether the President ought to be invited down here or whatever else. And as to the gentleman from Texas, Mr. Brooks' suggestion at the meeting of yesterday of some of the senior members of this committee, tacitly it was agreed that the President might be invited without publicity, and necessarily, therefore, I am suggesting that the motion of the gentleman from California will, I think, destroy the possibility that no publicity will be attendant to the option of inviting the President discreetly.

Mr. DENNIS. Mr. Chairman?

Mr. McCLORY. Mr. Chairman, may I inquire about the meeting tomorrow? What time will we be meeting? We are adjourning this meeting until tomorrow?

The CHAIRMAN. We are adjourning this meeting and the meeting tomorrow will be at 10:30.

Mr. McCLORY. Mr. Chairman, I move we adjourn.

The CHAIRMAN. The meeting is adjourned.

[Whereupon, at 4:04 p.m., the committee recessed, to reconvene at 10:30 a.m., Wednesday, June 26, 1974.]





# IMPEACHMENT INQUIRY

## Business Meeting

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WEDNESDAY, JUNE 26, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:50 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Bernard W. Nussbaum, senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order and the light photographers and cameras will please leave the room.

The committee will come to order and the Chair would first like to announce, before recognizing the gentleman from Arkansas, that we have received from Mr. St. Clair a letter addressed to Mr. Doar in which he advises Mr. Doar on June 25 that he has received on behalf of the President four subpoenas, and "As I advised you by telephone, the President is out of the country, will not return until approximately July 3, 1974, at which time I will see that the subpoenas are brought to his attention. In light of this circumstance, it will not be possible for the President to review these subpoenas and respond thereto by the date indicated thereon. Response will be made as soon as practicable following the President's return."

And it bears the signature of Mr. St. Clair, and each member will have a copy of this distributed to him so that they will be accordingly informed.

I recognize the gentleman from Arkansas, Mr. Thornton.

Mr. THORNTON. Thank you, Mr. Chairman.

Mr. Chairman, I am prepared to offer a motion for the naming of witnesses to be called to present testimony to this committee.

In connection with calling of witnesses and the selection of witnesses to be called, it is, of course, vital that we discuss in committee fully and completely the nature of the testimony expected to be given by those witnesses, and further the nature of these gaps in the evidentiary material which has hitherto been presented to our committee, which are required to be filled by witnesses' testimony.

Accordingly, in order to discuss fairly and completely and fully which witnesses are to be called, it will be necessary to discuss material which this committee is still bound by confidential rules to maintain confidential. Accordingly, Mr. Chairman, I now move that the committee resolve itself into a closed session to consider the matter of calling witnesses before the committee so that the committee members may feel free to refer to matters still covered by the rule of confidentiality.

Mr. CONYERS. Question, Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I would like to support that motion, and also indicate that when we go into closed session, assuming it is the will of the majority of the members here, and I hope it is, that I would like to add an amendment that would keep in executive session this committee during the time that we are examining the witnesses. I think that would be extremely appropriate, and there has been a discussion in the committee and among the leadership on this question.

And I would like to add that amendment to the gentleman from Arkansas' motion.

Mr. SEIBERLING. Would the gentleman yield?

The CHAIRMAN. The gentleman will be recognized at the appropriate time for that motion. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I would also like to indicate my support for the motion now being offered by the gentleman from Arkansas, Mr. Thornton, to close the meeting during the discussion of witnesses to be called. I think that he has made the point very clear that in order to fairly consider witnesses, we will have to be able to discuss what they are likely or expected to testify to, and that the rules of the House protecting witnesses and proposed witnesses against defamatory matter and whatnot would certainly warrant our consideration of them in closed session.

And I want to indicate my intention to vote for Mr. Thornton's motion.

Mr. BROOKS. Question, Mr. Chairman.

Mr. McCLORY. Well, will the gentleman withhold his asking the question to be put now? I would like to discuss the motion, if I may, Mr. Chairman, briefly, anyway.

The CHAIRMAN. Would the gentleman yield? Is this the motion with relation to the closing of the session or the motion concerning the calling of the witnesses that the gentleman from Arkansas intends to present?

Mr. McCLORY. The motion to close the meeting, Mr. Chairman.

The CHAIRMAN. Well, the question has been put. Does the gentleman—

Mr. McCLORY. Will the gentleman withhold?

Mr. BROOKS. Sure. I will be glad to.

Mr. McCLORY. Thank you.

Mr. Chairman, I am not going to oppose the motion of the gentleman. On the other hand, it was suggested by the gentleman from Michigan, Mr. Conyers, that he was going to propose an amendment to that motion which would require that these hearings be closed at the time that we examine witnesses. And I would like to suggest that these be separated, and that we have an opportunity to keep these meetings open insofar as the hearing of testimony is concerned.

I think that it is about time that we let the full light in on these hearings, that we demonstrate that we are not operating here in secret, and in some mysterious or devious way, which I think is the suggestion when we are not public.

And I am hopeful that we can consider that motion separately, and that the members will see fit to open up our hearings so that the public can see exactly what we are doing, can hear the witnesses that testify before us, and can be made aware of this entire proceeding that is being carried on here.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DANIELSON. Would the gentleman yield?

Mr. McCLORY. Yes, I yield to the gentleman from California.

Mr. DANIELSON. I recognize and I can count. I recognize it is probably futile to oppose this motion, though frankly I cannot in my mind see any reason why we should close the hearing today and then ask to have it open when we interrogate the witnesses themselves. All we are deciding today is the policy of whether or not we should call witnesses in the first place, and if so, which witnesses.

I personally see no justification for closing the hearings today.

Mr. McCLORY. The only thing I would comment on is that it has been represented that in connection with determining who the witnesses are that we will be discussing what witnesses will be saying, and which material at this time is confidential.

Now, we have already taken action to make public our record so that the record is going to be public, and there seems no reason to me why we should maintain secrecy with regard to a public record, or that we should maintain secrecy in a hearing that the public should be entitled to look in on.

Mr. McCLORY. I yield to the gentleman.

Mr. BROOKS. Mr. Chairman, on my motion, I would withhold it if you wanted to recognize Mr. Waldie for a moment.

Mr. WALDIE. Yes, Mr. Chairman. I want to oppose this motion for almost the exact opposite reasons that were stated by Mr. McClory.

It seems to me when we are discussing the reasons for calling witnesses, the alleged reason to close that discussion is because we will be considering evidence that has been, up to yesterday, in a confidential status. Yesterday we voted to open all of that evidence to the public.

Therefore, it seems to me in discussing the necessity of calling witnesses and whatever discussion of the kind of evidence that that would entail would breach no confidentiality because confidentiality really does not exist.

Now, I would think when we get to the point of taking testimony from the witnesses we will be confronting a different situation because we may very well bring in additional evidence that we have not considered as to which confidentiality may justly and properly need to at-



tach. But, at this point there is no evidence that is damaging or defaming or degrading, of which I am aware, and any discussion of that evidence in determining what witnesses are needed to fulfill any gaps in the evidence would not seem to me to be damaging to anyone.

And I would suggest that we hold the committee open while we discuss what witnesses we call, and consider closing the committee at such time as those witnesses are identified.

Mr. RAILSBACK. Would the gentleman yield?

The CHAIRMAN. May I clarify for the gentleman that while yesterday we voted for the releasing of the materials which were developed in executive session, that nonetheless, the rules of confidentiality still obtain until the publication of those materials. And therefore—

Mr. WALDIE. But you see, I understand that, Mr. Chairman. But again, I think we are in a kind of a "Catch 22" position that reflects adversely on the public. It does not damage anybody to discuss that evidence because it has not been published if it is necessary to discuss that evidence to come to a conclusion the committee is seeking. It might damage someone if we had not already made a decision yesterday that none of the evidence is damaging and should be released.

I would hope that the evidence would be released quickly, but to say that the committee should be hampered because of the mechanics of releasing the evidence would seem to me to be not very fair.

The CHAIRMAN. Would the gentleman yield?

Mr. SEIBERLING. Would the gentleman yield?

Mr. BROOKS. Mr. Seiberling.

Mr. SEIBERLING. As the committee knows, I raised yesterday a question on the motion to close the session as to whether, in fact, anything was going to be discussed which could reveal material that was received in executive session, and it was brought out that that was the case. Obviously, that is going to be the case today and, therefore, I think logically we have to follow the same procedure we followed yesterday.

I would like to point out, however, with respect to the comments of Mr. McClory that the issue as to whether particular witnesses should be examined in open session not only involves the possible release of material that was received in executive session, and that has not yet been made public, but also involves the possible testimony by those witnesses on matters that might tend to defame or degrade third parties. And I do not see how we can make a blanket ruling that we will have all of those in open session.

And I think it is appropriate to make that point now.

Mr. CONYERS. Mr. Chairman?

Mr. BROOKS. Mr. Edwards.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks still has the floor.

Mr. BROOKS. Congressman Edwards.

Mr. EDWARDS. Thank you. I appreciate your yielding to me.

I think we find ourselves in this quandary because we are making a mistake in examining the witnesses at this time. We have no overview of all of the evidence yet, we have had no real in-depth discussions about the possible bill of impeachment might be, and so here we are examining witnesses. What are we going to ask them? Are we just going to try to fill in holes in areas that might not be a part of the bill of impeachment, if any is voted out?

The wisest thing for us to do in the next week or so would be for us to examine the evidence we have and come to some kind of a theory as to what we want to do, and then fill in the gaps with a number of witnesses.

Now, I will go along with the procedure, but I think we ought to, I think I ought to point out that we are making a mistake.

Mr. LATTI. Would the gentleman yield?

Mr. BROOKS. I promised Mr. Flowers, and then I will get to Mr. Railsback and then Mr. Latta, and maybe we can go all morning closing the meeting.

Mr. FLOWERS. Mr. Chairman, in reflecting on yesterday's meeting that we closed, I cannot remember a thing that was disclosed in our subsequent executive session that could not have been just as well done in open session, and I speculate that that is what would be the case today as well.

And I am constrained to agree with my friends from California who say that we might as well be open during that aspect of it.

I think one of the problems, we are getting ready to run full square into, is on when this material is going to be published, Mr. Chairman. We have got a ruling that the rules of confidentiality will obtain until the material is published. Now, will the material be published in complete form and at one specific time, all of the material?

The CHAIRMAN. The gentleman recalls that yesterday the Chair advised him that those materials will be published in accordance with the motion, and that the first materials that are ready and available will be sent to the printers, and they will be printed accordingly.

Mr. FLOWERS. In other words, they will be published in installments?

The CHAIRMAN. I do not say they are going to be published in installments, but the gentleman knows we were presenting the materials at the time in various phases of the inquiry. Now, whether or not it will be published all at one time is another question.

Mr. FLOWERS. Well, the problem is, as I see it, Mr. Chairman, and I will not belabor this—we went through it several times—we are going to have part of this subject to the rules of confidentiality, and part of it not, and for how long none of us really knows.

The CHAIRMAN. The gentleman from Texas still has the floor, and I am going to put the question.

Mr. BROOKS. Has Mr. Railsback got a point?

Mr. RAILSBACK. Yes; I will be very brief and I thank the gentleman for yielding.

I am going to support the motion of the gentleman from Arkansas. I think that we probably will discuss some of the potential evidence relating to some of the potential witnesses that we want to call. And I think also that there are going to be some amendments probably that will want to include other witnesses that are not under consideration of being called for certain specific reasons. And the chairman is absolutely right, that in our motion yesterday we certainly did reserve the confidentiality of the materials until the published materials are actually released.

So, I think there is certainly merit to the gentleman's motion.

Mr. BROOKS. Congressman Latta? Mr. Latta, did you have a question?

Mr. LATTI. Yes, Mr. Chairman. This does not happen very often so I had probably better comment on this. I find myself in agreement

with my friend from California, Mr. Waldie, and also Mr. Edwards. And I think we are getting the cart before the horse until we hear from Mr. St. Clair. I do not think that we are in a position to state what witnesses we ought to call, and I think we are probably stretching this rule of confidentiality completely out of proportion. I do not think it was adopted for this purpose.

We ought to be able to mention some of the names at least that we ought to have called before this committee without breaching the rule of confidentiality.

It has been stated that these witnesses might, will say things that they should not be saying. Well, if we know what they are going to be saying, we do not need to call them in the first place.

Mr. BROOKS. Question.

Mr. OWENS. Mr. Chairman, would the gentleman yield briefly for a question?

Mr. BROOKS. If I still have the floor.

Mr. OWENS. I would like to ask a question of the Chair, if I might. I agree basically that we may be discussing and will be discussing gaps in information still under the rules of confidentiality and, therefore, ought to decide the question of which witnesses ought to be called I suppose in a closed session under our rules. But, will it be the intention of the Chair to decide whether, in fact, the witnesses to be called would be interviewed in executive session today also in this session?

The CHAIRMAN. The motion calls for the naming of certain witnesses, and the interviewing of others before a determination will be finally made as to whether or not they will be called. And I think that it would be appropriate, as a matter of fact, to address a question to counsel who have been interviewing some of these witnesses, who are potential witnesses, to determine whether there is not confidential material that they are going to be talking about.

Mr. OWENS. Would it not be the intention of the chairman to do as we did in the nomination hearings of Mr. Ford last fall, to decide on an individual case-by-case basis whether a given witness should be heard in a private session?

The CHAIRMAN. I think it is a matter for the committee to determine as to what the potential witness is going to be expected to testify to. And I think that an appropriate motion can be made accordingly.

Mr. OWENS. Would that be made today?

The CHAIRMAN. I believe that it would be.

Mr. OWENS. Then, Mr. Chairman, I will vote against closing the meeting, for what that is worth.

The CHAIRMAN. If the gentleman would yield, I would like to address a question to the counsel. Is counsel able to advise us regarding the various witnesses who are listed on the various motions that are going to be before the committee, and as to whether or not in the discussion of these witnesses it is possible that there is going to be material that is confidential material that might tend to defame or degrade?

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. It is entirely possible that discussions with respect to these witnesses will elicit at least some references to matters that would tend to defame or degrade.



May I also observe, Mr. Chairman, for the consideration of the members of the committee, that the trial of the Ehrlichman plumbers case commences this morning and probably is now in course, and the selection of a jury before Judge Gesell, and that jury cannot be sequestered before some time tomorrow, and so that as of today there is a possibility of reference to grand jury material that Judge Gesell, as you will recall, afforded us with the professional representation made on behalf of this committee that we would not reveal any of that until Judge Gesell had sequestered that jury.

And then Mr. Doar wishes to present in the course of the matter this morning, some conferences that we had with counsel for one of the witnesses, which frankly, we cannot reveal in open session.

The CHAIRMAN. The question is on the motion of the gentleman from Arkansas. All those in favor of the motion, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[Chorus of "noes."]

The CHAIRMAN. The Chair is in doubt and a rollcall is demanded and the clerk will call the roll.

All those in favor of the motion to close the session please say aye; all those opposed, no. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report the vote.

The CLERK. Twenty-five members have voted aye, 13 members have voted no.

The CHAIRMAN. And the motion is agreed to, and accordingly the committee will proceed in executive session, and other than staff, and committee members all others will please leave the room.

[Short break.]

[Whereupon the committee proceeded to executive session.]

# IMPEACHMENT INQUIRY

## Executive Session

WEDNESDAY, JUNE 26, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 11:25 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Bernard W. Nussbaum, senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The gentleman from Arkansas.

Mr. THORNTON. Thank you, Mr. Chairman.

Mr. Chairman, as I stated in the committee a few moments ago, I am prepared to offer the motion for the adoption of a resolution which is at the desk of the members. I would like to at this time to offer that resolution and urge its adoption by the committee.

The CHAIRMAN. Will the gentleman have the clerk read the motion.

The CLERK [reading]:

Resolved that the committee call before it the following witnesses: Alexander Butterfield, Herbert Kalmbach, Henry Petersen, John Dean, Fred LaRue.

The examination of such witnesses before the committee shall commence on July 2, 1974.

The committee shall hear the testimony of these and any other witnesses within 7 full working days of hearings, concluding on July 12, 1974.

Resolved further, that counsel are directed to interview the following individuals in advance of determination by the chairman and ranking minority member whether to call them before the full committee as witnesses: Charles Colson, John Mitchell, H. R. Haldeman, Paul O'Brien, William O. Bittman.



The scope of the testimony expected of each witness before the committee shall be specified in writing as determined by the chairman and ranking minority member.

The CHAIRMAN. The gentleman from Arkansas.

Mr. THORNTON. Mr. Chairman, we are now at the stage of proceedings where it is necessary to call witnesses in order to fill in certain evidentiary gaps which may be developed during the process or may have become apparent during the process of our examination of some 7,000 pages of documents relating to the materials which have been presented by our staff.

I think it is vital for us to recognize that we are at this time limited to the development of material which has not already been presented and that we should restrict ourselves from merely duplicating or repeating testimony which we have already reviewed, which has already been presented in sworn testimony before other bodies, and which would require nothing but the expenditure of additional time by this committee.

Accordingly, the list of witnesses which I have proposed I have tried to outline specific areas of information on which these witnesses might be expected to bring to the committee information which it does not have.

First, Alexander Butterfield is in a position to testify as to the organization and the procedures of the White House itself, as to the flow of the chain of command from the President of the United States through his chief of staff, through other aides to give an indication of the habitual methods of performance of the White House, what information goes into the President and the nature of the information and directions which return from the President.

We have had an outline by counsel of this chain of command, but we have not had any testimony to that effect, and Mr. Butterfield should be able to give a good presentation to our committee of this kind of information.

With regard to Mr. Kalmbach—

Mr. LOTT. Would the gentleman yield for a parliamentary inquiry?

Mr. THORNTON. I will yield.

Mr. LOTT. Mr. Chairman, are we going to have an opportunity to discuss these as we go along, or do you intend for Mr. Thornton to go through his list here and discuss each one individually, or if we have any questions, for instance, about a particular witness, are we going to withhold that until he gets through or should we address questions as he goes along here?

The CHAIRMAN. I think it would be more appropriate for Mr. Thornton to first present the basic reasons as to why he offers this motion.

Mr. LOTT. Thank you for yielding.

Mr. THORNTON. Respecting the material, I will attempt to materially shorten my discussion of the following witnesses in order that we may open up for specific discussion on any name mentioned.

Mr. Kalmbach certainly is in a position to be familiar with a great deal of Internal Revenue Service information, and particular inquiry might be appropriate as to whether or not he has knowledge of the use of the Internal Revenue Service information with regard to depriving any American citizen of rights which he may have.

Mr. Henry Petersen had a conversation with the President involving the scope of internal security, what elements were included in the definition of internal security. I am sure all members of the committee recall that conversation, and with particular reference to whether that related to the *Ellsberg* case. It is my view that Mr. Petersen should be called to develop further evidence on that question.

With regard to Mr. Dean, I think it is important that we make an effort to establish the exact time of contact with Mr. LaRue with regard to the final payment of the attorney fee to Mr. Bittman, and the contacts made.

The CHAIRMAN. Will the gentleman yield at that point?

Mr. THORNTON. Yes, sir.

The CHAIRMAN. I would like to advise the gentleman that while I appreciate what he is now saying, that the inclusion of Mr. Dean and Mr. LaRue on the list specifically was at the request of counsel for the President, Mr. St. Clair. And as you know, in a letter that was addressed to Mr. Doar by Mr. St. Clair, there are further individuals who Mr. St. Clair would like to have considered as potential witnesses. So, I think that this is a matter that the committee should be well aware of, that this is an effort to accommodate the counsel for the President, and this does not necessarily, I think, mean that the members of the committee all feel the same way as Mr. St. Clair as to the need to call some of these witnesses.

Mr. THORNTON. Thank you, Mr. Chairman, for that clarification, because indeed, I was making an effort to express in my own words the reasons given by Mr. St. Clair in requesting that this witness be called.

With regard to the request by the President's counsel, which does also include Mr. LaRue, and for a similar reason, it was my view that the response as a whole did not fully comply with the rules of this committee with regard to stating with clarity the specific information sought to be furnished by witnesses requested by the President's counsel and, indeed, was rather general and not stated in accordance with that rule. That is rule B-3 of our impeachment inquiry procedures which states that:

Should the President's counsel wish the committee to receive additional testimony or other evidence, he shall be invited to submit written requests and precise summaries of what he would propose to show. And in the case of a witness, precisely and in detail what it is expected that the testimony of the witness would be, if called. On the basis of such requests and summaries, and of the record then before it, the committee shall determine whether the suggested evidence is necessary or desirable to a full and fair record in the inquiry.

And the rule continues. It was my view, Mr. Chairman, that while the request might fail to specifically denote the area and the testimony expected of these witnesses, that in the instance of John Dean and Fred LaRue that I would propose to include those in the list of witnesses to be called by the committee.

With regard to Mr. Mitchell, Mr. Haldeman, and Mr. Bittman, who are also requested to be included, it was my view that they should be listed for interview by our staff in order to determine whether or not information would be presented which would be necessary to our inquiry. That list also includes Mr. Charles Colson and Mr. Paul O'Brien. I think it is pretty widely known the nature of the informa-

tion which the staff wished to interview Mr. Colson about, and Mr. O'Brien will be interviewed probably on the time of contact with Mr. Hunt.

I would be glad to yield for questions.

Mr. MOORHEAD. Mr. Chairman?

The CHAIRMAN. The Chair is going to recognize members now for purposes of debate only.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman. I have some questions to ask of the maker of the motion.

Would you explain to me whether or not it is your intent by including the language "The committee shall hear the testimony of these and any other witnesses within 7 full working days of hearings, concluding on July 12, 1974," is it your intent that whether the witnesses' testimony shall have been completed at that time that the hearings will cease nevertheless?

Mr. THORNTON. I would respond to the gentleman by saying that that would be the intent. However, any action of this committee is subject to further action of the committee, and were that eventually to occur, I would think the committee would be well able to address itself to the problem when the problem itself occurs.

Mr. DENNIS. Mr. Chairman, for debate only?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Excuse me.

Mr. WIGGINS. Well, I was not quite through.

Mr. DENNIS. I am sorry.

Mr. WIGGINS. I have another question as to form here. The last sentence of the proposed resolution requires the chairman and ranking member to submit the scope of the testimony of the witnesses. Does that sentence apply to just those witnesses in the latter category?

Mr. THORNTON. It was my intention, if the gentleman will yield for a response?

Mr. WIGGINS. Yes.

Mr. THORNTON. It is my intention that the scope of the testimony would apply to all witnesses called by the committee, and not merely to those that were interviewed under the last paragraph.

Mr. WIGGINS. The chairman and ranking member then would have a duty to do that for the benefit of the committee with respect to Alexander Butterfield and the rest; is that true?

Mr. THORNTON. That is the intention of the maker of the motion.

Mr. WIGGINS. All right. OK.

Now, I would like you to explain with some precision the reason why there is a group 2; that is, why Chuck Colson, for example, is in this second category and not up in the first category.

Mr. THORNTON. If the gentleman from California would yield?

Mr. WIGGINS. Oh, of course.

Mr. THORNTON. It is my view that the nature of the information to be derived from the named people in the second category is as yet uncertain, that the staff has not yet had an opportunity to determine what information, if any, might be presented by these witnesses which is not already available to our committee in some other form, and that,



therefore, it would be inappropriate to schedule these named people as witnesses until that determination has been made.

Mr. WIGGINS. Well, I understand your reason, and we are talking about the merit of them.

And a final comment, if I may, Mr. Chairman. This is addressed to counsel. You agree that the Kalmbach testimony would be addressed to an IRS problem? Was that your intention in considering Kalmbach for testimony?

Mr. DOAR. Well, there were other matters as well that we were looking at. One is the matter with respect to the dairy price support matter, and a possible additional area with respect to Watergate in response to a suggestion made by Congressman McClory.

Mr. WIGGINS. Well, Kalmbach seemed to be pretty well out of the IRS situation, but very much into some other matters, and I wondered whether it was an inadvertent mistake by Mr. Thornton or there was really something in the IRS field that Mr. Kalmbach could be helpful to this committee on.

Mr. DOAR. You remember Mr. Jenner reported on an interview that he had with Mr. Kalmbach about an IRS matter.

Mr. WIGGINS. All right. And then finally, and I will yield the balance of my time, is Mr. Butterfield to testify only to custom and practice and habit with respect to White House operations, or do you anticipate evidence from Mr. Butterfield with respect to a specific order being relayed and a specific response to that order?

Mr. DOAR. Well, I do not know of any specific order. I will say to the Congressman, however, that as you know, or may recall, he participated in the transfer of the \$350,000 cash from the Creep organization to Mr. Haldeman, and he participated in the transfer back.

Mr. WIGGINS. More pointedly, I am wondering if counsel would intend if Mr. Butterfield were before this committee to ask a question with respect to a specific matter of an order being relayed by him to the President and the President's response thereto?

Mr. DOAR. No.

Mr. WIGGINS. Have you talked to him about any such order?

Mr. DOAR. I have not.

Mr. WIGGINS. Do you anticipate any such testimony?

Mr. DOAR. I do not. I would think the committee might want to hear about one or two occasions where he checked the integrity and the efficiency of the taping system. But, whether or not or who communicated that order to him, I cannot tell you.

Mr. WIGGINS. All right.

Mr. DOAR. So that with respect to specific orders, no, I have no such information.

Mr. WIGGINS. OK. Fine. Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. The one thing that occurred to me on this motion is the listing of Charles Colson in the second category, and I would like to ask Mr. Doar just what material do we have on Colson and any other comments that would make it clear that this is probably just as good a category as any for him to be in? Have you materials on him? Have you interviewed him at length?

Mr. DOAR. I want to say to the members of this committee that when this list was suggested we had conducted, Mr. Jenner and I had conducted 1 day of interview with Mr. Colson. We had arranged for further interviews and yesterday we did, members of the staff did conduct a further interview with him.

With respect to the material on Charles Colson, we already have the following: we have a 50-page statement that Mr. Colson made and presented to the chief counsel of the Senate select committee. We have his California Grand Jury testimony. We have his testimony and affidavit that he filed in the *Ehrlichman* case. We believe, although we have not seen that, we have his grand jury testimony in the *Ehrlichman* case, and we have a statement made at the time he entered his plea of guilty. And we have his statement made at the time of sentencing.

And finally, although we have not yet seen it, we have questions that were submitted to him and answered by him by the Special Prosecutor, and we have an affidavit or will secure an affidavit from Mr. Shapiro with respect to his interview with Mr. Hunt on the 16th of March, and the fact that he communicated the information which he received from Mr. Hunt to Mr. Colson.

Now, it is my judgment that we have not yet received any additional information from Mr. Colson beyond that which is in these documents. But, I could not state that at this time, and cannot say that positively because we have not yet completed our interview with Mr. Colson, nor have we completed the review of this material.

Mr. CONYERS. Well, the only thing you have not got is his conversion statement, the way it sounds to me. But, I am satisfied: I am satisfied that he belongs on this qualified list. It seems to me at our leadership meeting we were not as sure which position he ought to go in, but I would like to make one observation about this motion, which I like, because it sets terminal dates, and I need not remind the committee that we are on a schedule, and as a matter of fact, we are running late in the judgment of many of the colleagues that meet me on the floor every day.

And I would further add, Mr. Chairman, that the calling of witnesses need not necessarily resolve any of the disputes and the problems that still exist in this entire matter.

Now, for everybody on this committee that has tried cases or has even witnessed trials, the calling of witnesses frequently do little more than exacerbate the differences that exist, so I do not think that there are lawyers on this committee that are thinking that everything is magically going to be resolved by the fact that most of these people, lawyers themselves, are going to come before us to help resolve the problems, because we are not trying to determine truth or falsity that leads to the complete resolution of the articles of impeachment. We are seeking what some people have described as whether there is probable cause, and I do not think it really reaches that. I have not found anything in the literature that says that the House is looking even for probable cause. We are trying to find out whether there are enough matters in the articles we draw up that would warrant a trial that would resolve the questions, and so I am going to support this motion.

I like the divisions that have been made, and I certainly approve of the timetable that is inherent, especially since the gentleman from Arkansas has pointed out if any extraordinary circumstances arise we might be able to look into it.

Mr. DENNIS. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I also intend to support a motion that would include all of the people that are listed in the top category. I do have trouble understanding why we have not also listed Colson. I still have that trouble, even after my friend from Michigan examined Mr. Doar.

Also, I think it is very significant that Haldeman and Mitchell are also on the lower list rather than being up above.

I have one other question. I wonder why Kehrli—did we decide we do not want to call Kehrli or take him by affidavit?

Mr. DOAR. We are going to try to get it by affidavit. His attorney has agreed to provide an affidavit for us.

Mr. RAILSBACK. Mr. Chairman, it just seems to me that Haldeman, whether he would testify or not, is a very key witness to all of the events that took place on March 21. I would personally like to see him subpoenaed and subjected to an examination so that we would be in a position also to assess his credibility.

I have to tell you that without prejudging—I do not mean to prejudge—in looking at the documents that we have about Haldeman, where he has been examined, time after time, he has indicated that he does not remember, I do not remember. I do not recall. It would be very interesting for me to see him examined using a base of information that we have available to us now that the other examiners did not have available to them, because I just feel that he has been extremely wiggly.

Mr. CONYERS. Would the gentleman yield on that point?

Mr. RAILSBACK. Yes.

Mr. CONYERS. Suppose he says the same thing with the same base before all of us. Would that add anything to the proceedings?

Mr. RAILSBACK. I think it would if he were examined from a base of information such as the taped conversation that we have on March 21. In other words, I think we have some other information to refresh his recollection. I would like to see how he responds.

Mr. THORNTON. Would the gentleman yield?

Mr. RAILSBACK. I will yield to the gentleman from Arkansas.

Mr. THORNTON. I would like to state I have great confidence in our staff and our chairman and our ranking minority member to conduct this interview and determine whether or not the information that would be obtained from these witnesses listed in the lower half of this motion would be useful to us. I am sure that the kind of inquiry you have just made would be given great consideration by them in making this determination.

Mr. DENNIS. Mr. Chairman?

Mr. RAILSBACK. If I still have some remaining time, I do not think Mr. Chairman, that we necessarily have the tools available to us in an interview that we would have if it were a full-scale testimonial under all of the rules of examination and cross-examination, and for that reason, I am concerned that we do not call those three major names.



Mr. McCLORY. Will the gentleman yield?

Mr. RAILSBACK. Yes.

Mr. McCLORY. It has been represented that one of the principal reasons for having Mr. Dean and Mr. LaRue on the list is that they were requested by Mr. St. Clair. I would like to point out that Mr. Haldeman and Mr. Mitchell were also recommended to be included by Mr. St. Clair and the justification or specifying or outline of what they were testifying to set forth in his letter to counsel.

The CHAIRMAN. Would the gentleman yield?

Mr. McCLORY. Yes.

The CHAIRMAN. I would like to respond to that and state that Mr. Dean and Mr. LaRue were on an initial list, actually not a written list, but their names were communicated to counsel for our committee, the impeachment staff. The additional names were just presented to us only yesterday. This is the reason why they were not discussed.

I also want to point out that if the committee really wants to be strict about the names being submitted by Mr. St. Clair and the justification that is before us, Mr. St. Clair was a very able attorney, knows how to interpret the rules, has not fully complied with those rules.

Now, the Chair does not intend to do other than to interpret the rules, but I would like to point that out. Mr. St. Clair has not precisely and in detail specified what potential witnesses would testify here.

Mr. RAILSBACK. Yes, but, Mr. Chairman, if I still have the remaining time, let me just point out that at our advisory meeting, we were of the opinion—I was of the opinion—that Haldeman definitely was on a list to be called. Haldeman's name was to be put on a list of eight.

The CHAIRMAN. To be interviewed.

Mr. RAILSBACK. It was also my understanding that Colson certainly was on the list. All of us talked about Colson.

Mr. DENNIS. Mr. Chairman?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I would respectfully disagree, I think in part, with the gentleman from Illinois. We certainly discussed Mr. Colson. The other five I have no question about. As I say, I would respectfully dissent. I was in another caucus the same day and I decided we were going to do one thing and we did something else, so I could be confused.

These rules, as the chairman has indicated and as the gentleman from Arkansas initially presented to you, please look at the impeachment inquiry procedures, look at rule B-3. As the gentleman from Arkansas indicated, the President's counsel, if he wishes the committee to have additional evidence, he should be invited, one, to submit written requests, as he has done, and precise summaries of what he would propose to show, as he has not in some cases done at all, I think. Some he has done, but a good many he has been rather general about; again, second, in the case of a witness, precisely and in detail what it is expected the testimony would be if called. Now, on one or two of these as you look at them, I think he has done that part of the requirement.

I take it all of these requirements should be met. In the case of Haldeman, I do not quite see a precise statement at the beginning of what he would testify to. In the case of LaRue, I do not see it at all.

In the case of Mr. Dean, it is anticipated that. This may be important, "He believes that," "it is anticipated that."

Now, I do not take it that that is the sort of summary that most of you would prepare filing a motion for summary judgment or something of that nature. You say that this witness will testify this, his testimony will be that, or he will prove that.

Now, on O'Brien, he did not give the summary. He did, I think, properly present the testimony. He says he will testify, he will testify, he will testify. I take it that is the way you would approach this. But to go on.

We do not want to be that totally nit-picking, but I do not think we want to ignore the fact that this was not the correct procedure in case it comes by again.

Now, the third issue here, the committee shall determine whether the evidence is necessary and desirable to a full and fair record. And the gentleman from Arkansas went through all of this with you.

Now, here is the part that was not gone through with you. And if so, if you determine it is desirable and necessary, whether the summary shall be accepted as part of the record. That is why I keep saying he should state at the top, the following witness will testify blank, and just lay it out there, what he will testify. Because if you follow it on, the committee shall decide whether the summary shall be accepted as part of the record. There may be cases where we will agree he testifies that. We can accept that that is what he will state. Then we determine whether additional testimony is required or needed. I think he should put it in a form where I think in some instances, we could agree with the witnesses.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. Chairman, I have just a couple of observations to make about this motion.

I am in favor, of course, of calling every one of the witnesses listed on the motion. I am in favor of calling additional witnesses and I have an amendment I will offer at the appropriate time when recognized for that purpose which will attempt to do that and also address itself to another point I am going to make. But at this point, I just want to make, really, two observations. One is on the matter of witnesses.

I cannot help but think, although I am in favor of calling every one of these people listed, that there is something wrong with our priorities when we list, for instance, as a must witness, a comparatively minor witness such as Mr. Butterfield and omit from the must list such outstanding characters of the Watergate drama as Mitchell, Haldeman, Colson, and Hunt. I just cannot help but think that there is something wrong with priorities.

Mr. HUNGATE. Would the gentleman yield?

Mr. DENNIS. If the gentleman would defer, I would be happy to yield, but I would like to finish.

When we do that, now, an interesting thing to note is that although they are both on the motion that I will offer at the proper time, Hunt, who is the alleged blackmailer of March 21, and therefore, I think,

rather important, and Colson, whom I believe we just cannot avoid calling, are not on anybody's list. They are not on the committee list. They are not on St. Clair's list, either. They are on my list and I think they ought to be on all our lists.

Now, the second thing I would like to observe is that I think it is a serious mistake to put a terminal date on ourselves. It is unnecessary. Nobody wants to extend this thing beyond what we ought to be doing and when we are through with what we think we ought to do, we can stop and we should stop. But the effect of saying that you have to stop on July 12, really, if any of these people say anything, is just this: You will be lucky if you get through the first five. You are not going to get down to the second five, and I think it is a mistake to divide witnesses that way—musts and maybes. You just ought to have all witnesses.

Now, in the second five, four of them are witnesses that the President's counsel has asked, so most of the President's counsel's requests are not ever going to be honored if we stick to the date. The other one is Colson that nobody has asked for, but who certainly ought to be here. So I would say—and they do include such important people, regardless of who asked for them, as Mitchell and Haldeman.

So I simply say at this time that this motion, although I want to have every one of these witnesses here, Butterfield included, is faulty in its present form for a least two reasons: It has its witness priorities mixed up from the point of view of any rational, thorough investigation, which is what I am assuming we all want: and it is shackling us most unnecessarily with a fixed cutoff date, which I never heard of before in such a situation.

Now, I yield first to my friend from Missouri, who asked me first.

Mr. HUNGATE. I thank the gentleman for yielding. On the time situation, we have all felt the pressures of Congress wishing to move this along and historically, one must look at the last impeachment we had and the committee had the matter 3 days. Under that view, I do not think anyone did say that we have acted overly expeditiously. So I will agree that 7 days is 7 days, but I think we are reaching the point where we have to take some sort of action.

As to Mr. Butterfield, he may be a minor witness in some places, but he is going to be a major witness, I think, as far as Missouri is concerned. I think he could be very important.

Mr. CONYERS. Will the gentleman yield? I just want to make clear he really is not insisting that we call outstanding characters in Watergate as a criterion to come before the committee on the witness list.

Mr. DENNIS. Will the gentleman yield?

Mr. CONYERS. And was the gentleman not one of those who was urging at the beginning of the impeachment inquiry when the House first authorized the Judiciary Committee to begin work that we set a terminal date on the entire, the entire impeachment proceeding at the beginning? And now you object to a witness termination date?

Mr. DENNIS. If the gentleman will permit me to respond, the answer is no to the last question, as far as I recall. What I say about witnesses is that we should call the important witnesses.

Now, the gentleman said a moment ago you do not necessarily clear things up. Of course, you do not, but you get the chance to clear them



up and that is the chance we ought to take. I personally feel especially about this March 21.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Everyone who knows anything should be called if you want a decent investigation.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Donohue.

Mr. DONOHUE. Mr. Chairman. I would like to inquire regarding the motion made by the gentleman from Arkansas whether or not the provisions made in his motion were agreed upon at the advisory committee meeting on Monday afternoon or Tuesday?

The CHAIRMAN. No; not at all. The Chair recalls that at that meeting, there was an understanding that five witness who were listed would be called as witnesses. There was a question as to Mr. Colson and the question as to Mr. Colson was that interviews had been conducted, but both counsel had not been satisfied with regard to the interviews that had been conducted up until that time.

The names of Mitchell and Haldeman were additional names that counsel for the President had communicated to Mr. Doar and to Mr. Jenner as possible others. But Mr. St. Clair had specified explicitly that Dean and LaRue would be called and then the letter came with other witnesses who might be potential witnesses that St. Clair would intend to call.

The question as to time, although not fully agreed on, we talked about the possibility of taking off the 4th and 5th of July, and I am going to state that if we are going to fool around with trying to delay this, we are going to work the 4th and 5th of July as well. We are going to do that if it becomes necessary.

I thought that we had fully talked about the 7 days and that these witnesses would be called to testify to specific areas, which would not mean a rehashing of testimony that had been produced before the various committees, but to at least attempt to resolve in the minds of the members who felt that there was an absolute need that there would be some clarification.

Now, 7 days was, in my judgment, while not fully agreed upon, but it is 7 full working days, working in the mornings and in the afternoons and at night. And unless we conclude this by July 12, in order to get there—and we can do it—then I do not see that we are determined to conclude this inquiry. I am determined that we are going to conclude this inquiry and get it to the floor of the House.

Mr. McCLORY. Would the gentleman from Massachusetts yield to me for a minute? Mr. Donohue?

Mr. DONOHUE. I will be pleased to yield to you.

Mr. McCLORY. Thank you, Mr. Chairman. Thank you, Mr. Donohue.

I want to concur generally in what you said, Mr. Chairman. I do want to emphasize that I think we want to be very careful that we do not let this inquiry get too tense or the feelings get too strong among us here. I think it is a good time to reflect; I think it is good for us to reflect once in a while on the importance of our keeping a good tone to our proceedings here. I would like to disagree with you, Mr. Chairman, in this respect: I think Mr. Colson was included among the six which we were definitely going to call, and I do not necessarily

want to disagree with him not being in that position right now, because I think he does, it is important for us to interview him some more and to make, for you and Mr. Hutchinson and counsel to make a final decision on him. But I would also like to say that Mr. Haldeman and Mr. Mitchell, too, were included among the witnesses that we would call subject to them being interviewed by counsel.

So I just want to make those remarks and also mention that we did not set a definite closed-out date.

I would like to suggest that we give a little further consideration to that. I think that should be a target date, but I think that to build it in rigidly into our motion is going to—I just do not think it is a good idea. It is certainly not a good idea from our standpoint.

Mr. DONOHUE. Mr. Chairman? Mr. McClory, you say that the date of July 12 was not mentioned at the meeting of the advisory committee?

Mr. McCLORY. No; the date of July 12, I think, is a good date. I would like to close, conclude the hearing of witnesses at that time. The only thing that I am saying is what if, for instance, we have only finished with two or three witnesses up until Friday and we have several witnesses that we have not heard from. To say that we have to hear all the balance of the testimony in order to meet that date because we have a resolution which ties us into that, I think, would be a mistake. That is why I think we should modify the language somewhat so that it is not a final cutoff date, that is all.

Mr. HUNGATE. Will the gentleman yield?

Mr. McCLORY. I yield.

Mr. HUNGATE. Could we take a look at where we are at the end of the 3d of July and decide whether we want to meet on the 4th or 5th if we need added time and hold to our deadline of July 12?

Mr. McCLORY. That is all right with me. We talked about working nights and I think we ought definitely to do that.

Mr. HUNGATE. My wife thinks we do.

Mr. LOTT. Mr. Chairman, in that connection—let me state first of all, I am not opposed to a termination date but I am a little surprised at this point about some of the statements that have been made about a termination date. We have gone along for almost 6 weeks on some of this material and all of a sudden, we put a date on it. But I would like to reiterate, I would like to see us conclude this thing. I hope we will not continue this line of statements.

I wonder if in that connection, we talk about finishing the 12th and whether or not we are going to meet the 4th or 5th. I wonder whether this anticipates or includes meeting on Monday the 1st and the following Monday, the 8th.

The CHAIRMAN. It does include meeting on Monday the 8th. The only reason that witnesses would not be called on the Monday following the 4th—no, next Monday—would be because it would allow time for the preparation of witnesses and the issuance of subpoenas if necessary.

Mr. LOTT. All right, sir.

The CHAIRMAN. I would like to respond as well that the 12th is not an arbitrary figure. This was discussed in the hope that members would recognize that the Chair was trying to be fair and if there is an absolute showing that there is a need to interview further wit-

nesses for the purpose of trying to really reconcile some differences, fine. And the Chair had this resolution prepared only after there had been discussion among the senior members and this reflects what that understanding was, not beyond that.

Mr. LOTT. Of course, the more junior members of the committee were not aware of that. But I appreciate the chairman's statement that this is not an arbitrary date and could be subject to change, depending on what has happened.

If I could go on for a couple of questions. I appreciate the gentleman from Missouri saying we were not nitpicking on Mr. St. Clair's statements here about why these witnesses are needed, but he did bring up one point I thought was important. He emphasized the rules saying that the committee will decide what witnesses will be called. In the gentleman's motion here, it provides that more or less a determination will be made by the chairman and the ranking minority member after interviews. That disturbs me. I think that the members of this committee should be privy to these interviews and that the committee should make that decision—not that we would not have total confidence in the chairman and ranking member, but I think this is of such significance that—

Mr. FLOWERS. Will the gentleman yield?

Mr. LOTT. I will be happy to yield to the gentleman from Alabama.

Mr. FLOWERS. On that question, I am a little in the air as to what it means, the chairman and the ranking member. Does that mean the chairman and the ranking member have to agree on it, or that either one can make that determination or what?

Mr. LOTT. I think that is a very important point. I appreciate the gentleman making that point. I think it is something that should be cleared up. Perhaps the gentleman from Arkansas would like to respond to that question.

Mr. THORNTON. Certainly in drafting the motion, the thought was that the chairman and the ranking minority member would reach agreement on the calling of a witness and that that agreement would be required in order to call one of the named people.

Mr. FLOWERS. It is kind of difficult, if the gentleman will yield further, to assume that they will agree when we cannot agree. I think that is a wide open problem area that we ought to determine now rather than far off in the future somewhere.

Mr. LOTT. I do, too, and I think at the appropriate time, an amendment should be offered.

If I could go on, Mr. Chairman, for a couple of other things.

With regard to Mr. Ehrlichman, there has been no mention of Mr. Ehrlichman. Perhaps counsel can enlighten me on this. Is it because of the present status of his trial that it is thought it would be impossible to get him, or is it felt he has nothing new to offer, or what comment would you have on that?

Mr. DOAR. Well, he has not been making himself available for interviews.

No. 2, he is under indictment and his trial is pending. It was just thought that he would not be available and that he also had already testified to matters that were pertinent to this inquiry.



Mr. LOTT. I thank the counsel. I think for all practical purposes, we probably would not get him. But in my opinion, we should, I think we should be trying to get him, because there are some questions in my mind unresolved by what we have heard that I would like to hear his comments on. I am just throwing out a series of things that bother me about this and I think that we should consider calling him. Whether we will in fact be able to get him or not, he is important to me and should be on one of these witness lists.

Now, two other brief comments in the time I have left. I feel very strongly that Colson should unequivocally be in the first block of witnesses. I just do not see where there is any question about that, that is my own opinion, for what it is worth.

A final comment on Mr. Butterfield. I would like to ask the gentleman from Arkansas again. I do not see where he is going to offer anything new and particularly enlightening. We know what the chain of command was and basically how the machinery worked. Is he going to reiterate or confirm?

Mr. THORNTON. If the gentleman would yield?

Mr. LOTT. Surely.

Mr. THORNTON. A question may arise in some people's minds as to whether the President is isolated from the decisionmaking process in the White House and as to whether certain of the President's subordinates habitually and characteristically made decisions on their own which were then carried out as being in the name of the President, with the President not advised of those decisions and actions. Mr. Butterfield should be in a position to determine and to state to this committee whether in fact the President did consult with his aides and advisers, whether he participated in giving directions and decisions which were then carried out by his aides. Mr. Butterfield is a very important witness, not in the sense of his importance in connection with the Watergate, but in the sense of his importance in understanding the flow of authority from the President of the United States to those who carried out those decisions, and indeed, I would like to also reemphasize that in calling witnesses now, we should not make our priorities upon the importance or the name recognition value of the different witnesses that might be mentioned, but rather upon the importance of the information which it is reasonably expected that that witness might produce.

Mr. LOTT. I thank the gentleman and I certainly respect his views on that subject. But since we are going to try to bind ourselves into a certain period of time, I think we should attach some importance to what these witnesses will say and maybe consider in some way at least putting them in some order of priority. If you do that, I think that in my opinion, absolutely Butterfield belongs on the bottom of this list. I cannot see that his testimony is going to be that significant.

I yield to the gentleman from Maine.

The CHAIRMAN. The time of the gentleman has expired. Ms. Holtzman.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

I wonder if the gentleman from Arkansas would clarify a point in the resolution. I understand that the inclusion of John Dean and Fred LaRue was prompted by the fact that Mr. St. Clair wishes to

call these witnesses. Is it the intention of this resolution to limit the direct examination of these witnesses by Mr. St. Clair to the areas contained in his letter regarding an offer of proof and that he will not be able to go beyond that in the questioning?

Mr. THORNTON. I think it might be more appropriate to address the question as to the limitation of the scope of the examination to the Chair. However, I would say that in general, those witnesses who are called for a specific area should be limited to that, in my view should be limited to that area of interrogation for which purpose they are called.

Ms. HOLTZMAN. Does the Chair agree with that interpretation of the resolution?

The CHAIRMAN. That is correct.

Ms. HOLTZMAN. Thank you.

I would like to go on now and say that I personally would object to the questioning of the witness if it is going to elicit either incompetent or repetitious testimony. For example, I notice in the offer of proof regarding Fred LaRue that Mr. St. Clair intends to prove by his testimony that no other authorization was given by any White House personnel for the payment on March 21. I do not know how Mr. LaRue could testify to that on the basis of his knowledge and I would object to any offer of such testimony. I do not think, unless he can testify as to exactly what other people do—I would hope that your resolution would enable the Chair to rule out of order questioning that will elicit incompetent testimony and to rule out incompetent testimony.

Mr. THORNTON. I think the Chair has that authority under the general rules of the committee.

Mr. HUTCHINSON. Will the gentleman yield for just an observation at that point?

Ms. HOLTZMAN. I think I have the floor.

Mr. HUTCHINSON. I just want to respond to you, if I might.

That is you say you do not understand how Mr. LaRue could testify that no other authority was given at the White House. Mr. LaRue can certainly testify as to whether he received any authority from anybody and I think that is the intent of the statement.

Ms. HOLTZMAN. Well, the intent of the statement, however, is very broad and I would object to any such question concerning other people's knowledge.

I have a very brief time to ask some questions. I am sorry, I want to get some clarification.

Second, does the maker of this motion anticipate that Mr. St. Clair would be restricted to producing testimony that has not already been produced under oath before other committees? I see, for example, that with respect to Mr. Haldeman, Mr. Dean, Mr. LaRue, much of the offer of proof has appeared in testimony before other committees.

Mr. THORNTON. I think this expresses very clearly the reason for the committee's rule requiring a specific offer of proof, stating exactly what the proposed witness would testify to, because if indeed, the testimony is merely repetitious, certainly the committee would be well justified in accepting the offer of proof rather than calling a witness for the purpose of repetitious testimony.

Ms. HOLTZMAN. Well, it is not necessary to accept an offer of proof, is it, Mr. Thornton, if the testimony has already been given?

Mr. THORNTON. I think that is correct.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Chairman, it is obvious that there is considerable debate and division on this side as to the priorities to be accorded to these particular witnesses. I support the argument raised by the gentleman from Alabama about why we split up the delegation here. On the one hand, the committee decides the first four or five; yet the chairman and ranking member decide the optional ones. I at the appropriate time would like to, plan to, introduce an amendment to strike the words "chairman and ranking minority member" in lines 16 and 17 and insert the word "committee", because I think the committee, after the staff has had an opportunity to interview Colson, Mitchell, Haldeman, O'Brien, and Bittman, they can then make their recommendations based on their interviews to the full committee, but I think we ought to retain that authority.

The CHAIRMAN. Would the gentleman yield?

Mr. COHEN. I yield.

The CHAIRMAN. I would merely like to point out that I know the committee wants to do a thorough job and we all want to do a thorough job. We have to have some planning here. I think that the intention of this resolution was to provide counsel, who I am convinced have done a competent job and who are competent in every respect, because they have intimately gone over this ground and intimately discussed these matters with the people who are potential witnesses, and further interviews would only reveal to us through them whether or not in their competence, they feel that these witnesses are important or not. This would be what they would communicate.

Now, I would hope that the gentleman in suggesting what he does, that he recognizes that here we are with a list that we had an advisory group—and recognizing that all members were not participating in that advisory group meeting, but there was some agreement and we are still discussing this. And we are going to be, gentlemen and ladies, discussing this from now until doomsday. I feel that we had better recognize that until we get this in some scheduled, orderly fashion—and the reason why we talked about the 12th is that it is going to take time then to debate and it is going to take time to prepare reports and it is going to take time to get to the floor. You are going to have, you who are going to debate this and be primarily responsible, are going to be debating this question until November.

Mr. COHEN. I understand that, Mr. Chairman. If I can just respond, I think all I am saying is that I can support this motion to call witnesses if we take the second part of it and make it subject to the same test we are doing today. That is have the committee at least pass judgment based upon the recommendation of counsel. I have complete confidence in the ability of counsel as well, but I think it is our responsibility to make the decision. So I think as soon as you complete your interviews, we can vote on it.

Mr. SARBANES. Mr. Chairman?



The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, as a member who did not participate in this advisory committee meeting and therefore does not have any shackles that may come from that meeting. I find this motion to be a pretty reasonable way to proceed. I would like to suggest a couple of points.

First of all, I think the list at the bottom does nothing more than give the chairman and the ranking member, after the interviews by the staff, the ability to move us forward. Now, obviously, any decision they make is going to be subject to review by the committee if the committee chooses to do so. So if there is a decision at that point not to move forward on their agreement, then that decision can be brought before the committee for review. I do not see this, really, as precluding the committee from any option in moving ahead. In fact, I see it as structuring a procedure that enables us to get this work done expeditiously.

I think the points raised on the time deadline are interesting, but I would favor having it as a way of, in effect, disciplining us to complete this process. I think it will move us into morning, afternoon, and evening sessions if necessary. If that proves insufficient, I would assume that near the conclusion of that period, we could add additional time if it were clearly necessary. But I think it would provide us with a framework within which to work.

I as one who was not involved in the discussions that brought this motion forward think that this is a sensible way for the committee to proceed. I do not think we have given up any of our authority and I think we have structured it in a way that will enable the chairman and the ranking minority member to expedite the questioning of witnesses in an orderly and proper manner.

The CHAIRMAN. There is a quorum call on. The committee will have to recess. I guess we will return at 2 o'clock.

[Whereupon, at 12:30 p.m., the committee recessed to reconvene at 2 p.m., this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. At the time that the committee recessed the debate was still on the question on the motion on the gentleman from Arkansas, and I think we have debated that motion. And unless there are other members who have not been recognized—well, I would just like to ascertain who just wants to be recognized on the debate and that is all?

I am going to tell you now, all of you as well, you might as well know we are going to stay here until we get this thing done. And tomorrow Mr. St. Clair has been invited to respond, and if you want to push that off, then I just want you to be aware of the fact that we have these matters to take care of, and I think that we have a timetable to observe. So, I am going to recognize members who want to be recognized for the purpose of talking on the motion, and then we will go on to the amendment stage. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I would like to address a question, I think, to the author of the motion if he is familiar with it. There is nothing in here with refer-

ence to the witnesses concerning the President's tax situation. Are you satisfied with the state of the evidence with regard to the President's taxes, or are we going to be asked to pursue that further by another motion?

Mr. THORNTON. If I may respond to that, it is my belief and understanding that that material had been presented to our inquiry staff only a short time before it was gathered together and presented to us. And included in the materials which may have been presented to them are other documents and other information which may yet be brought to the committee's attention.

There may be continuing inquiries which the committee staff may wish to make. I think it would be more appropriate to address the questions with regard to staff inquiries to staff counsel.

However, there are some areas which it would seem to me would require some clarification.

Mr. BUTLER. I think that answers my question insofar as this motion is concerned. I have another question for counsel.

We have been promised a memorandum on theories of impeachment. Can you give us some rough idea of the timetable in regard to that, and when we might expect to have that?

Mr. DOAR. Well, we hoped that sometime during the course of next week we would have that finished, at least in a form that the committee could consider it. You know, alternate theories.

Mr. BUTLER. So you should have something for us next week?

Mr. DOAR. Yes, sir.

Mr. BUTLER. Thank you.

Now, one more question with reference to the witnesses. I am not sure that I understood counsel's response to the question by Mr. Lott. I recognize as a practical matter the doubtful availability of Mr. Ehrlichman, but the question was basically, ought we not still subpoena him anyway so that his response to that would be a matter of our record? What was your response with reference to that?

Mr. DOAR. Well, I had two responses. The first is that I did not know of any testimony that Mr. Ehrlichman might have that has not already been made a part of the record in the case. Of course, we have not interviewed him. We could try to interview him.

Mr. BUTLER. But it is your view that he really has nothing to offer that we do not already have?

Mr. DOAR. Well, he may have something to offer that we do not already have, but we were not under the impression that he was going to offer that if he did have anything. I would like to relate to you my conversation with the attorney for Mr. Mitchell this morning so that you could have an idea. As soon as I was able to learn that the committee wished me to contact Mr. Mitchell and Mr. Haldeman, I placed a call to Mr. Mitchell's attorney, and as soon as I was able to reach him I inquired if Mr. Mitchell would be available for an interview, and he said, well, he had not talked to his client.

And I talked to him about Mr. St. Clair's request, which he was not aware of, and I said, well, would you talk to your client and advise me if we could interview Mr. Mitchell. And he said he would as soon as he could, and he called back in a half hour and he said he would respectfully ask that he not be called, Mr. Mitchell. He was not volun-

tarily willing to come up and testify. I asked him if I could interview Mr. Mitchell and he said no.

Well, I am reporting to you—

Mr. BUTLER. And you anticipate that would be much the same reaction from Mr. Ehrlichman's counsel? You had an earlier conversation with his counsel, who is a dear friend of Mr. Jenner's?

Mr. DOAR. That is what we anticipate.

Mr. BUTLER. Now, is it the recommendation of counsel that in the light of those two reactions that we not subpoena these people for that reason?

Mr. DOAR. Well, I think the committee has got to see if the counsel of a party makes it clear that he does not want his client to voluntarily testify, and suggests that even if he were called up to testify that he might feel obliged to advise his client not to testify, and I think in light of the limited testimony that Mr. St. Clair expects from these witnesses it is not necessary to call them, would not be wise to call them.

The CHAIRMAN. The time of the gentleman has expired. The time of the gentleman has expired.

Mr. JENNER. Could I say something, Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Butler and ladies and gentlemen, there is another consideration which you will want to have in mind. This is not recommending anything, of course. If a witness who is under indictment and awaiting trial is called before this committee, and on advice of counsel is required to plead his rights under the fifth amendment, that is a matter that you would want to consider seriously as to the effect of that on the community and the venire from which his jury in September would be selected.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, I will be brief. I think that it is imminently unfair if we do not allow Mr. St. Clair to call the witnesses he requested.

Now, it has been said many times that this is not an adversary proceeding, but there are certain elements of an adversary proceeding about this inquiry, and I think it would be less than equitable if he is not given an opportunity, and if we are in a position of determining who he can call for defense witnesses. I hope that an amendment is offered to expand that list to include the names of the witnesses suggested by Mr. St. Clair.

Mr. RAILSBACK. Would the gentleman yield?

Mr. HOGAN. I will in a moment. I hope also that an amendment will be offered to delete paragraph 3. I have been very anxious to have this concluded, as every member of the committee has. But, when we establish an arbitrary date, we have no way of knowing how complex the questioning of the witness is going to be, we have no way of knowing how many rollcall votes there will be during our deliberations which will interrupt us, and I think that it would be much preferable for us, as a committee, to establish that as a target date without solidifying it down in the resolution itself.

I wanted to ask two other things. We had been promised a layout of the White House, which as far as I know we have not yet received. And I am also wondering if and when we will receive the transcripts



of our meeting, if we are going to have that information at the time we go through the study of the books?

MR. DOAR. The answer to the first question is you will. The answer to the second question is that the transcripts have been received and have been reviewed for corrections, and they are available. But, no decision has been made with respect to the committee.

MR. HOGAN. In other words, they are available for me to review here, but they are not available for me to take with me; is that right?

MR. DOAR. Well, I do not know how many copies of the transcripts we have. But, if you wanted to take some of the transcripts or any transcript for a particular day, I do not——

MR. HOGAN. It would be OK to remove them from the office?

MR. DOAR. Well, yes. I do not think——

MR. HOGAN. Thank you. I yield to the gentleman from Illinois.

MR. RAILSBACK. I want to thank the gentleman for yielding.

MR. DOAR, it seems to me from what you have just told us that if Mr. Mitchell refuses to grant an interview, and if Mr. Haldeman should refuse to grant an interview, and say, if Mr. Colson—well, Mr. Colson has been interviewed. But, it seems to me as a member of this committee, and one that is listed again as a neutral or persuadable, it seems to me that we are going to subject ourselves to tremendous criticism if we do not bend over backwards to give Mr. St. Clair what amounts to a reasonable request.

Now, if he had come in with 20 witnesses, some of whom were obviously not relevant, not important to our inquiry, then I would agree with any reasonable effort to cut him back so that the witnesses that he suggested be at least reasonably relevant and necessary. But, when he comes in with about five or six names, some of whom are obviously key people, it is going to look very bad for our committee not to honor his reasonable request.

And if these people are going to refuse to grant interviews, which I bet they will, then I think it is even more imperative than ever that we do call them, and I have no idea what they are going to say. I have no idea whether they are going to be exonerating or whether they are going to be incriminating. But, it is pretty obvious, Mr. Chairman, they are going to be important, and you and the rest of us are going to be subject to charges of not fulfilling our duties fairly if we do not give Mr. St. Clair any reasonable request he makes.

MR. WIGGINS. Mr. Chairman? Mr. Chairman, I will be brief.

THE CHAIRMAN. Mr. Wiggins.

MR. WIGGINS. Mr. Chairman, these questions are addressed to counsel. At some point soon, hopefully, the committee will agree to a list of witnesses. When the witness on the list is called before the committee, who will commence the examination?

MR. DOAR. Well, my understanding would be either Mr. Jenner or myself.

MR. WIGGINS. Is that true with respect to all witnesses, including those requested by Mr. St. Clair which are honored by this committee?

MR. DOAR. Well, I do not think that has been decided by the committee.

MR. WIGGINS. Well, I am trying to raise it now. This may not be the time to decide it, but let me go on.

Mr. EDWARDS. Would the gentleman yield?

Mr. WIGGINS. Of course.

Mr. EDWARDS. I cannot imagine that Mr. St. Clair would not have the privilege of examining his own witnesses at this point, and that makes sense to me.

Mr. WIGGINS. I think he ought to commence the examination of his own witnesses, but there is a question as to whose witnesses these are.

Mr. EDWARDS. The ones he requests.

Mr. WIGGINS. If they are called by the committee. I want to explore that a little bit further. In the case hypothetically of let us take Mr. Petersen, and he is on the committee list, if either you or Mr. Jenner examine Mr. Petersen with respect to specific evidentiary material, is it your understanding that Mr. St. Clair will thereafter be given an opportunity to question Mr. Petersen?

Mr. DOAR. Yes.

Mr. WIGGINS. What will be the scope of his examination?

Mr. DOAR. It would be limited to the subject matter of the examination by counsel for the committee.

Mr. WIGGINS. All right now, if we are going to adhere to that rule, then I think we ought to do so after some debate, because it is going to put the President's counsel in the position of wanting to call some of these witnesses on his own if we are going to rigidly adhere to the rule with respect to the scope of the cross-examination. And it ought not to be assumed by this committee, at least without some debate.

Mr. DRINAN. Would the gentleman yield?

Mr. WIGGINS. Of course.

Mr. DRINAN. Thank you for yielding. As a part of the subcommittee that drew up the rules, we tried to meet the objection the gentleman from California raises, and rule 4 on page 2 states that—"The President's counsel may question any witness called before the committee, subject to instructions from the chairman or presiding member respecting the time, scope or duration of the examination."

Mr. WIGGINS. Well then, I will direct my question to the chairman.

Have you given some thought to the problem, Mr. Chairman, and is it your intention to limit the scope of the examination by the party not calling the witness? I am hesitant to call it cross-examination, but you know what I am talking about. Is it your intention to limit that examination, however characterized, to the scope of the direct examination?

The CHAIRMAN. Well, the Chair is going to abide by the rules, and hopefully that in the interpretation of those rules if it calls for the questioning of the witness and the limiting of the questioning of the witness by the counsel for the President to that portion of the examination that was presented initially, I think that is what I am going to have to adhere to.

Mr. WIGGINS. Well, in that event—

The CHAIRMAN. The Chair would also state, however, that the Chair finds that in the event that it appears that the questioning is directed in such a way as to elicit that kind of information, that is going to be helpful to the inquiry, I do not think that the Chair is going to in any way preclude that kind of questioning.

Mr. WIGGINS. Yes. I am somewhat comforted by the Chair's comments and I would hope that in the exercise of your discretion that you

will not feel rigidly bound by the rule, as you understand it, with respect to the scope of cross-examination, because if the Chair makes such a ruling, the natural and understandable desire by the President's counsel will be to wish to call the man as his own witness, and it is going to unnecessarily prolong the hearings, it seems to me.

The CHAIRMAN. Well, the Chair will, as I have stated before, observe the rules and interpret them, in the interest of making this a fair hearing, and hopefully that we elicit that kind of information that is going to be helpful for the members that the Chair will take that into consideration.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, further on what Mr. Railsback said about the witnesses that Mr. St. Clair has requested, it seems to me that the Thornton resolution, the Thornton motion or resolution is the reasonable way in the first instance to try to get over that hurdle, simply because it leaves it to the chairman and the ranking minority member to make an initial determination. And obviously, if their determination does not meet with the approval of the rest of the committee, the committee can overrule them. And I do not think that we should anticipate what their decision is going to be.

I do feel, however, that unless we have a very strong reason for refusing a reasonable request by the attorney for the President to examine a particular person, that we should, in the interests of fairness and bending over backwards, we should permit him to do that.

Mr. RAILSBACK. Would the gentleman yield?

Mr. SEIBERLING. So long as it does not interfere with the progress, unreasonably with the progress of this investigation, which I think is now at the point where we simply must move it along with the greatest possible dispatch. I am willing to sit here the 4th of July, Saturday, Sunday, and any other time.

Mr. RAILSBACK. Would you yield?

Mr. SEIBERLING. Yes, I will yield.

Mr. RAILSBACK. Let me just say what my apprehensions are, and I appreciate your remarks and I think that a majority of the members on the other side want to be fair. One thing that bothers me is already, already Mr. Mitchell has refused to cooperate with what we wanted to do under these second tier.

In other words, it becomes pretty apparent that if Mr. St. Clair is to get his request answered, we are going to have to subpoena, and we might as well face it. Frankly, if Mr. St. Clair wants to subpoena only five or six people, if our chairman has control of his cross-examination, which I believe he does, subject to being overridden by the committee, I think it is to our great benefit to bend over backwards to give Mr. St. Clair every reasonable request that he makes.

Mr. SEIBERLING. Well, reasonable is the key, because we have to weigh that in the light of this committee's responsibility. But, it seems to me that we can leave it to the chairman and the ranking minority member in the first instance to look into it in sufficient detail to find out whether there is any reasonable likelihood that we will get anything worthwhile out of that witness.



If Mitchell, upon further investigation, just says in effect that I am not going to tell you anything, why obviously it would be a vain thing to call him unless you just want to put him on the spot.

Mr. RAILSBACK. Would you yield?

Mr. SEIBERLING. Yes.

Mr. RAILSBACK. Does this include Mr. St. Clair participating in the interview?

Mr. SEIBERLING. I do not know what the procedures involved are.

Mr. RAILSBACK. If he does not, then it is not fair, because Mr. St. Clair is saying I want to call, I want to examine these people, and I think he has that right.

Mr. SEIBERLING. Well, there is nothing to stop Mr. St. Clair from attempting to interview Mr. Mitchell, if he wishes.

Mr. RAILSBACK. What if they do not respond like they did not to our counsel?

Mr. SEIBERLING. There is no way that either Mr. St. Clair or Mr. Doar or Mr. Rodino can compel Mr. Mitchell to have an interview.

Mr. RAILSBACK. We can subpoena him.

Mr. SEIBERLING. Yes, but that is a different thing.

Ms. HOLTZMAN. Would the gentleman yield?

Mr. SEIBERLING. Yes, I yield.

Ms. HOLTZMAN. I agree with much of what the gentleman from Illinois has said, but it seems to me that this offer of proof by Mr. St. Clair must have been based on his having some contact with this, rather these people, so that he could inform us as to what he would expect them to testify. And if he did not have such contact, then, I do not know what this offer of proof means.

Mr. SEIBERLING. I yield to the gentleman from California, Mr. Edwards.

Mr. EDWARDS. I thank the gentleman and I too agree with much of what the gentleman from Illinois, Mr. Railsback, said and what Mr. Seiberling and Ms. Holtzman have said. But we would be making a mistake if we try to plan too far ahead here. I am sure the gentleman from Illinois has the assurance of people on this side of the aisle that there is going to be no railroad job here and we are certainly going to give Mr. St. Clair and respondent every bit of due process he is entitled to.

But, I think there is a danger in trying to anticipate 1 week or so ahead.

Mr. RAILSBACK. Would you yield?

Mr. EDWARDS. Sure.

Mr. RAILSBACK. I thank you for yielding. Let me just explain once more, if I can clearly, I think there is a difference, Mr. Edwards, and frankly, I think I have a very personal, high regard for the way you have conducted yourself during these hearings. But, let me tell you my own apprehension is that there is a difference between John Doar and Bert Jenner examining for one purpose and Mr. St. Clair being permitted to examine for perhaps any other of a number of purposes. I think that St. Clair has a right to examine himself, or to interview himself, and it is not enough to say to him, gratuitously, that our counsel will conduct an interview and then we will let the ranking republican member and the chairman decide if he would be called to be a witness.

If one of them does not agree, frankly, there is no provision that permits them to be called.

Mr. EDWARDS. This is an executive session, right?

Mr. SEIBERLING. I believe I have the time.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. EDWARDS. Could I have 1 more minute? I would like to get an answer to Tom's question.

The CHAIRMAN. Well, I will be glad to recognize the gentleman from California.

Mr. EDWARDS. Tom, this is assuming this examination, the various examinations you are talking about will be in executive session?

Mr. RAILSBACK. Well, I think that what we are saying is No. 1, what I am concerned about is not the examination, whether it is in executive or open session and frankly I probably disagree with you on that. What I am concerned about is that this interview by no stretch of the imagination serves as a replacement for an examination under oath.

Mr. EDWARDS. Well, we were talking about fairness and I have to be very frank and say that I do not think—I think that you lose me on fairness if you say that all of the other work which we have done has been in executive session and as soon as Mr. St. Clair comes on the scene we just go public. It just does not make sense to me, and I think it is very unfair.

Mr. WIGGINS. Will the gentleman yield to me?

Mr. CONYERS. Will the gentleman yield?

Mr. EDWARDS. Yes. I have the time. Sure.

Mr. CONYERS. I thank the gentleman for yielding to me. I hope we will, in the backdrop of this motion offered by the gentleman from Arkansas realize that there was at least a presumption that we were going to have these witnesses called not before the world, as it were, but that in the interests of getting to whatever they may have to offer these proceedings, if anything, that they would be done within the executive session rules of this impeachment committee.

I would think that all of our deliberations on this motion would be with that in mind. I am going to offer an amendment to this at the proper time, Mr. Chairman, if necessary, or a separate motion that we, in fact, conduct the hearings and the examination of the witnesses in executive session.

Mr. EDWARDS. I will only make one more observation in the remainder of the time that I have, and that is I do think that at all times we have to be careful that this does not become a trial. A trial, if there is going to be one, is in the Senate. Our job is clearly to find. We are here to do just a certain thing and not to have a trial. The moment we get Mr. St. Clair in an adversary position with our counsel, or us or you, then it becomes a trial and I think that our cause and our mandate is going to suffer from it.

The CHAIRMAN. I would like to address a question to the gentleman from Illinois. Are you suggesting that Mr. St. Clair is going to dictate the proceedings as to who is to be called by this committee? And if Mr. St. Clair is to suggest that none of these witnesses be called, that we not call them?

Mr. RAILSBACK. Would the chairman yield?

The CHAIRMAN. I addressed the question to the gentleman.

Mr. RAILSBACK. My feeling is the way this scenario plays out is that this committee hears from the staff for 6 weeks and Mr. St. Clair is given 2 days to make a response, which is his request, as I understand it. He wants about 2 days.

The CHAIRMAN. He said 1 or 2 days.

Mr. RAILSBACK. I am further of the opinion that he is given two witnesses that he has requested, and which incidentally, we would all have insisted be called, too. I do not know if we had the horses, but I would guess that there would be enough members here that John Dean is so key and so vital that he would have been called in any event. But, be that as it may, he is given the opportunity to call two witnesses. My feeling is, and I am not running the show, and you are, Mr. Chairman, and I think you have done a good job by and large, but I would bend over backward if he did not submit a list of 20 names or 15 names. But, if we really believed, or a majority of us believed that the people he wanted us to call were very relevant, I would see, in the interests of preserving our integrity and our credibility, that he was given everything he asked for as far as his right to examine initially witnesses that he called.

I am not suggesting that he run the proceedings. You are going to run the proceedings. His examination is going to be subject to your rulings, and the scope of his examination is going to be subject to your rulings. But, if we deny him the right to call, especially after what we just learned, where an interview was turned down from John Mitchell, we have got to call.

The CHAIRMAN. I would like to remind the gentleman that it was at Mr. St. Clair's insistence that the first two witnesses that he wanted called were placed on the list; that the others were placed on another list which he submitted after we had gotten together and after we had discussed this and they were placed on this potential list to be interviewed. I have also suggested, and I think it certainly would be a likely suggestion, that if Mr. St. Clair were to insist that witnesses be subpoenaed, then Mr. St. Clair should make that kind of request to this committee, which he has not done.

Mr. RAILSBACK. Well, perhaps that is the answer, then, if that is—I kind of agree.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. I just want to point out in respect to this conversation that nothing in the motion offered by the gentleman from Arkansas precludes reaching the position that I understand the gentleman from Illinois is advancing.

Mr. SANDMAN. Oh, it does, too.

Mr. SARBANES. Nothing in that motion precludes that. We may well get exactly there under this procedure. The question is whether this process is a reasonable one in trying to work out this matter and it seems to me that it is. Conceivably, at some later point, you may raise some of the considerations that you are raising now, but they may never come to the fore. It seems to me this is an effort to try to develop a process that will enable us to work through this thing. Nothing in here precludes getting where you apparently want to get. That is one of the reasons I think this is probably a pretty reasonable proposition.



Mr. MOORHEAD. Will the gentleman yield?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Moorhead.

Mr. MOORHEAD. The big problem we have here is we are never going to get back to this thing again; 2 weeks from now, we want to close off the witnesses altogether. If we do not make our plans today who we are going to call, they are not going to get called in all probability. There will probably be no more business meetings. The opportunity to subpoena any recalcitrant witness or one that does not want to come just will not be here for us. I think it is most important for us and the American people that we do give the President's counsel an opportunity to call those few witnesses that he feels are important. And the things that he expects those witnesses to testify to deal with the very heart of this impeachment inquiry; that is the payments to Hunt. Each one of these items goes right back to that very vital issue. I want to know more about that particular issue and I think other members of the committee do, and I would like to have the opportunity to hear those witnesses and have them cross-examined by Mr. St. Clair and also by our counsel.

The CHAIRMAN. The Chair will recess the meeting until we have voted and this is final passage on HUD, Space, Science appropriations. [Recess.]

The CHAIRMAN. I believe Mr. Maraziti had sought recognition and Mr. Sandman.

Mr. LATTA. And Mr. Latta.

The CHAIRMAN. And Mr. Latta. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, looking at the offer of proof that Mr. St. Clair has made with respect to the witnesses he desires we call, if you only examine O'Brien, Mitchell, Haldeman, and Bittman on the assumption that we have already decided, I presume, as a committee to call Dean and LaRue, I am wondering if we simply stipulated that if those gentlemen were to be called, they would testify factually as set forth in the offer of proof, if that would not negate the necessity of calling them and if that would not satisfy Mr. St. Clair, who only desires to establish the facts that he set forth in his offer of proof.

The CHAIRMAN. The Chair cannot respond to that, since he does not know what Mr. St. Clair may have in mind.

Mr. WALDIE. Perhaps someone on the other side who speaks better on behalf of Mr. St. Clair might respond to that.

Mr. LATTA. I did not know anybody did.

Mr. WALDIE. Perhaps there is no one. It might be well for our counsel to address that question to Mr. St. Clair. If this offer of proof is all he seeks from any of these witnesses, I have examined it pretty carefully and I find, aside from his conclusions—leave those out, but just the facts that he sets forth that they will testify to, if we stipulate they would testify to those facts, we would meet all his requests and demands and we could then proceed.

The CHAIRMAN. We might address that to counsel and instruct counsel to inquire of Mr. St. Clair.

Has Mr. St. Clair made any comment or suggestion regarding anything of that sort?

Mr. WALDIE. I presume he desires nothing further than that which he sets forth in the anticipated testimony sections of his letter.

Ms. HOLTZMAN. Would the gentleman yield?

Mr. WALDIE. Yes.

Ms. HOLTZMAN. Would you just repeat the names of the witnesses that you are referring to?

Mr. WALDIE. The witnesses that I am talking about would be O'Brien, Mitchell, Haldeman, and Bittman.

Ms. HOLTZMAN. Thank you.

Mr. WALDIE. If he seeks information or evidence beyond that which he set forth in his offer of proof, it would be contrary to our rules in any event. He has, by this offer of proof, limited the area within which he may ask questions and if there is no disagreement that his factual statements are acceptable as to that which the witnesses will testify, we could quickly move to other pressing matters and not have compromised or distressed Mr. St. Clair or those who desire full and complete opportunity.

Mr. McCLORY. Would the gentleman yield for a question?

Mr. WALDIE. Yes.

Mr. McCLORY. Do I understand that what you are suggesting is that if Mr. St. Clair would stipulate as to the facts——

Mr. WALDIE. No, no, not Mr. St. Clair. Mr. St. Clair has already given us—if you will take a look at Mr. Haldeman's testimony, Mr. St. Clair said Mr. Haldeman will testify that he called Mr. Mitchell at 12:30 p.m. on March 21; fine; that he requested Mr. Mitchell to come to Washington to meet with Dean, Ehrlichman, and himself; fine; and that no mention in that phone call was made of meeting Hunt's demands for attorneys' fees and litigation expenses. I find that to be acceptable testimony and would see no reason to call Haldeman if that is all he desires. We could include that in the record as a stipulated——

Mr. McCLORY. My question is if that were stipulated, would Mr. St. Clair be barred from calling those gentlemen as witnesses?

Mr. WALDIE. Of course. Not barred, there would be no need to. That is all he seeks by bringing them before the committee. So if we accept what he seeks, he need not call them.

Mr. McCLORY. If the gentleman will yield, I assume what he set forth is an outline or a summary. It is not detailed testimony of what the witnesses are expected to give.

Mr. WALDIE. I would hope he would not violate our rules. What he is required under the rules to set forth is that which he agrees he will elicit. If he elicits that——

Mr. McCLORY. I think maybe he may have misinterpreted the rules——

Mr. WALDIE. I cannot believe that.

Mr. McCLORY. He may have provided too brief a summary.

Mr. WALDIE. That would be impossible for me to accept in the light of his expressed desire to search for truth as he set forth in his letter to the chairman, that he would in any way seek to mislead this committee.

The CHAIRMAN. The time of the gentleman has expired. Mr. Sandman.

Mr. SANDMAN. Mr. Chairman, I am not going to take 5 minutes. It only takes 2.

I hope we realize that this resolution can undo all of the good we have been able to do through your leadership over these 7 months. Feelings are rather strong about this resolution and I would hope that the gentleman from Arkansas could make a couple of changes here that I think can accommodate everybody.

I do not think there is anybody here that wants to go past the 12th of the month and I think we should wind up on the 12th of the month and perhaps there is a way to do it. As for myself, I am only interested personally in hearing from three witnesses in all of it pertaining to that crucial date, March 21.

Now, I know that I cannot have my way and just have the three that I want to testify, but if you put them altogether, it seems to me from the meeting we had the other day, we were talking principally about eight witnesses. Of that group, the least viable, in my judgment, was Butterfield. But you can leave it at eight. I do not care what you have here.

But, Mr. Chairman, and especially the gentleman from Arkansas, would you be willing to change your resolution by adding in there a provision that no witness shall take more than 1 day? If we do this, I think we will accommodate the chairman on his cut-off time. At the same time, you are not going to spend all of your time on one or two witnesses. I think this will allay the fears that most members have.

Then I would like very much to vote for your resolution.

Mr. THORNTON. Will the gentleman from New Jersey yield?

Mr. SANDMAN. In one second I will.

Now, the only ones I was worried about that were not in our list of eight—Colson does not mean a whole lot to me, but because he has said so much and so much of it is unclear, I think we almost have to call him. I do not have any real desire to call him, but I think most people do. If you add him to the top bunch.

In the second group, two that I would like to hear from—two of the only three I would like to hear from, because they are important on that crucial date—is Mitchell and Haldeman. If you put them up there, counting Butterfield, you would have eight. That is the group we talked about the other day. If we restrict it so no witness can take more than 1 day, we can accommodate what the chairman wants to do and I think it will allay all the fears everybody else has.

Would you agree to that amendment?

Mr. THORNTON. Will the gentleman yield?

Mr. SANDMAN. Sure.

Mr. THORNTON. I thank the gentleman from New Jersey for yielding. I think that it is very important to establish a date at which this committee will complete the taking of testimony. The committee has worked patiently and hard to get to this point and I think it would be lifting the advantage obtained by naming a date certain to go an alternative route and to say 1 day for each witness.

Another reason, another problem I have with that suggestion and the reason I cannot agree to it is because it might be possible to interview one of these witnesses in a morning and just maybe 1 day or 2 or 3 for another witness; and then another witness might only require 1 hour.



Mr. SANDMAN. Will the gentleman suspend for a second?

What I suggested was not more than 1 full day. That does not mean that he cannot take up half of one day and half of another day, but together, he should not take up more than a whole day. This can accommodate as many witnesses as probably everybody wants to hear from. I am only trying to make a reasonable compromise here.

Mr. THORNTON. I appreciate the sincerity of the gentleman's offer and regret that as far as I am concerned, I think it would really create some inflexibility to limit us as to the amount of time we might spend with each witness. I think it is far preferable to have a target date established that we all aim toward and to condense our receiving of information to meet that target date.

Mr. SANDMAN. The gentleman misunderstands me again. I am not suggesting that we change the target date. If you put in there not more than 1 day for each witness, you can reach the target date.

Mr. THORNTON. Are you suggesting that we leave the target day in, but add a phrase or paragraph, provided additionally that no more than 1 day shall be—

Mr. SANDMAN. For each witness, that is correct.

Mr. THORNTON [continuing]. Shall be used for each witness?

Mr. SANDMAN. Correct. I think that is a reasonable compromise and it allays the big fear of everybody else.

Mr. THORNTON. I agree with the gentleman that that suggestion has a great deal of merit and if an amendment were prepared to insert that language, I would be glad to accept it as the maker of this amendment.

Mr. RAILSBACK. Will the gentleman yield on that?

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. I thank the chairman.

In response to the gentleman from California, I do not believe that our rules require detailed questions and answers and I think Mr. St. Clair is entitled to elicit the testimony as he sees fit.

Now, I agree with the gentleman from Arkansas that our purpose in calling the witnesses is to fill evidentiary gaps and there are a number of evidentiary gaps. I think they warrant explanation and I think that many of these witnesses will supply that information. But, Mr. Chairman, I do not think that is the only purpose for calling witnesses. Mr. St. Clair has made a request and we have said all along that, indicated that this request will be honored. We know it is subject to the will of the committee, but the committee has to be fair, it has to be reasonable, and I think we ought to consider a reasonable request of the counsel for the President. As has been said by Mr. Railsback and others, the request is reasonable. It is limited, there are not a large number of witnesses, and I do not think it is for us, if we are going to say to defense counsel, we will allow you to call witnesses, I do not think it is for us to say what witnesses he shall call. I think he ought to have this right. I know what the rules are here. I think we have to be fair in the use and interpretation of these rules.

Now, as Mr. Railsback has said and others have said, we have been here 6 weeks. Are we not going to allow the respondent's counsel to have a reasonable amount of time?

And as to this point about whether Mr. Mitchell is willing to be interviewed by staff, I do not care whether he is willing to be interviewed or not. And I do not think the point is whether he is willing to be interviewed by staff.

Mr. CONYERS. Will Mr. Maraziti yield?

Mr. MARAZITI. I will in just a moment. The point is this is supposed to be Mr. St. Clair's witness. I am not interested in whether we issue a subpoena to Mr. Mitchell or not. We do not hesitate to issue a subpoena to the President of the United States and we can issue one to Mr. Mitchell. It may very well be that he will assert the fifth amendment; I do not know. But we do not know that until he appears here. He must take that witness chair and he must take the oath and then when a question is propounded, he must assert the privilege and he may not assert that privilege on a question or two that Mr. St. Clair may ask.

Mr. DENNIS. Will you yield?

Mr. MARAZITI. I will yield to the gentleman from Indiana.

Mr. DENNIS. I would like to commend the gentleman for the point he is making because it is worthwhile. I am surprised that this committee should take the position, if it is taking it, which it is hard for me to believe, that we just accept the statements of potential witness that they would rather not talk to us. I suspect a good many of them would rather not talk to us. We can still issue a subpoena, as Mr. Maraziti said, we have been subpoenaing the President of the United States right along. If we want a witness here, by golly, we send a subpoena for him. If necessary, we give him use immunity if we want to. I have been pointing out for 6 months—6 weeks at least—that we ought to face that question of immunity and we never have faced it. But, gee whiz, we still can do it if we have it to do.

I thank the gentleman for yielding.

Mr. CONYERS. Mr. Chairman, I ask Mr. Maraziti if he would just yield.

Mr. MARAZITI. Yes, I would yield.

Mr. CONYERS. Are there not other ways that Mr. St. Clair can make his case? If, for example, there is a time frame around which we cannot bring in all the witnesses in the world? I mean a sworn statement or affidavit or the other means. His case is not really going to turn on how many witnesses he can present, is it?

Mr. MARAZITI. No, not on how many, but you cannot assume if he wants five witnesses that they are all going to testify to the same thing. We have no right to assume or presume that the defense counsel is going to prove this point or that point. Frankly, we do not know. I do not know. All I want him to do is have the right, regardless of how we interpret these rules, you have to be fair; let that man have the right to produce five witnesses before this committee. I say you have the right to refuse that, but I wonder if you dare do it.

Mr. CONYERS. If you will yield further, I would like to point out that other people have been limited in their right to calling witnesses as well. He was not the only one who had an elongated witness list that has been curtailed under the press of time.

Mr. MARAZITI. Well, he is representing the respondent here and I think the respondent is the one that is intricately involved. We are talking about the President of the United States.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Thank you, Mr. Chairman. Mr. Chairman, I have sat here all day just wondering—

The CHAIRMAN. Excuse me.

Mr. LATTA. I am glad to get the chairman's attention.

I have been sitting here all day wondering whether or not all committees of this Congress preclude the rights of Members of Congress as we are attempting to be precluded in this committee.

Mr. HUNGATE. You have to be within the rules.

Mr. LATTA. I appreciate my humorous friend from Missouri but not on this point. He might have missed his calling.

I feel with regard to this inquiry that members of the committee have been so insulated that we really have not been a part of the action. I do not think we can stand up to the American people as a member of this committee and say that we really participated here. All we did is sat here and listened to material that had been accumulated by the staff and we do not know and I do not know—maybe the rest of you do, but as a member of this committee, I do not know whether all the material has been accumulated or not that is needed to have been accumulated. Either to find the President guilty of an impeachable offense or find him not guilty. I do not know whether all that material has been presented.

Now we get down to the question of witnesses and they propose that a member of this committee not even have the opportunity or the right to suggest and have it adequately considered, without rushing it through, whether or not witness A or witness B or witness C should be called. We leave it up to the staff. We have some kind of a meeting. We draft up one of these resolutions and we attempt to rush it through. We have some kind of a meeting where the more senior members of this committee get together and they decide on some process which even they do not agree on now.

I have not ever been one as a Member of this Congress that delegates his responsibilities as a Member of Congress to anybody, whether he is more senior than I, whether he is the chairman, or whether he happens to be the Speaker of the House.

I realize as a member of this committee what has been going on as far as pressure from Tip O'Neill is concerned. I realize that he has contacted the chairman, said, we have got to rush this through, we have to have a cut-off date. The chairman and the members on the other side are acquiescing. That is proper. But I sat across from Tip O'Neill for many years on the Rules Committee and he has never scared me one iota and he is not scaring me now. This is an important matter.

The CHAIRMAN. Will the gentleman yield on that point?

Mr. LATTA. I will be glad to yield when I am finished, because I have sat here all day and have not had an opportunity to be heard, and I will be pleased to yield when I have my say.

It just seems to me that we have a responsibility here as Members of Congress on one of the most important assignments in our time and I do not think that we ought to pass it off lightly and when we come to the matter of the President's counsel submitting to this committee five names that he thinks he ought to have a right to call, and then



we quibble as to whether or not he ought to call them, then we come up with some suggestion that perhaps we ought to stipulate—stipulate—rather than hear this man interrogate his own witnesses—I hope that we are proud of what we are going to accomplish, but I do not feel too proud as I sit here and listen to what is going on.

I think that we ought to consider—I know there are partisan politics always being made, even though we talk about this being a non-partisan inquiry. I have been around here too long to be hoodwinked into believing that. But I think that we have something so serious here on our hands that history, not the Democratic Party or the Republican Party, will determine what we do, whether it is right or wrong. The truth will eventually out and I think that we have an obligation to call every single witness if it takes until Christmas to get to the truth.

As I sit here today, I do not know the truth. I think that we ought to get the truth and this idea of cutting off testimony and witnesses by July 12 seems to me like we are not wanting to get the truth. We want to fold this thing up and rush it to the floor and we are going to have 100 hours of debate on the floor and there are going to be a lot of questions asked by other Members who are not privy to what went on here.

The CHAIRMAN. The time of the gentleman has expired.

Mr. LATTA. I think that we ought to sincerely consider what we do here, because history will.

I will be happy to yield to my friend, the chairman.

The CHAIRMAN. The time of the gentleman has expired. I appreciate the fact that the gentleman spoke with some emotion and some fervor about how he wants to approach this very historical momentous matter that is before us. I believe that if we recognize that we have been dwelling on a matter for a period of time to accumulate the material that has been before us now, presented for us to consider, to digest, to evaluate, I think we know that regardless of what the gentleman may have assumed about the majority leader and that he has no fear of Tip O'Neill, that this committee is moving in the direction it is moving in only because the chairman and the members feel a responsibility to act, not because anyone seeks to set a date but only because I think that the material is before us, the question is before us as to whether or not we are going to unduly delay and make a sham of this process or whether we are going to live up to our constitutional responsibility and not conduct a trial here in the committee. If the gentleman or any other member of this committee can point out to me that there is anywhere in the Constitution an article or a provision which states in any way whatsoever that there is to be a trial here in the committee or in the House, other than in the Senate, then I have not read the Constitution and I have not lived with this thing for the past year. This is what I feel that we ought to be addressing ourselves to, whether or not this is completed in a manner that is responsible and that is fair without rehashing or going over the same grounds.

Now, no one has tried to preclude the calling of witnesses.

Mr. LATTA. Well, Mr. Chairman, why cannot a member of the committee suggest a witness and have it adequately considered?

The CHAIRMAN. That is what we have been attempting to do.

Mr. LATTA. Then I would like to suggest at this point, Mr. Chairman, that John Ehrlichman be called before this committee whenever you have an opportunity, notwithstanding the fact that he might be downtown. How can you possibly resolve this matter without having John Ehrlichman before this committee?

The CHAIRMAN. Well, the gentleman has an opinion on this matter.

Mr. LATTA. I am asking a question of the chairman.

Mr. MEZVINSKY. Regular order, Mr. Chairman.

Mr. CONYERS. Mr. Chairman, may I be recognized for an amendment?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I would like to move the business of the committee forward. I have an amendment which I discussed earlier which does deal with the hearing of witnesses in closed session and I think the clerk may have that amendment. It would occur at line 11 and I would like it read and discussed at this point.

Mr. McCLORY. Mr. Chairman, would the gentleman yield? I would like to ask a question for clarification?

Mr. CONYERS. Surely.

Mr. McCLORY. This question is asked in a progressive spirit, Mr. Chairman. I think there is a little confusion in my mind, at least, as to a schedule that relates to bringing this to the floor of the House. I want you to know that I am anxious to bring it to the floor of the House. I am anxious to conclude this hearing and I intend to support the resolution substantially as offered by the gentleman from Arkansas. But is there not a scheduled time when we are expected to report to the House and when it would be expected to have discussion of this subject on the floor of the House?

The CHAIRMAN. I think that, as I have indicated before, if the scheduling as we have pointed out is followed, we would be bringing this matter to the floor of the House about the middle of August.

Mr. McCLORY. And we would conclude our debate here in the committee about the 22d of July and have a report before the Members of the House about the 1st of August?

The CHAIRMAN. That is correct.

Mr. DENNIS. Mr. Chairman, a parliamentary inquiry. I do not doubt that we can consider the amendment proffered by the gentleman from Michigan first if that is the chairman's desire. I had been under the impression that we were going to consider the several amendments that are pending to the motion and get the motion in final shape before we take up the subject of whether or not the meetings would be executive. I am sure we can reverse that order if the chairman wants to, but I take it it will not preclude those of us who have amendments to the motion, and a substitute which I personally have, as the chairman knows, from being offered at the proper time.

The CHAIRMAN. I would like to advise the gentleman that I am aware of the fact that he proposes to offer a substitute and the amendment which the gentleman from Michigan is about to offer is a perfecting amendment and nothing more. It is perfectly proper.

Mr. DENNIS. I do not suggest it is not proper. I think it is sort of on a different subject, because it is on the question of whether we hold public hearings or not rather than the form of the amendment.

The CHAIRMAN. I would like to advise the gentleman that this occurs in the body of the motion and is appropriate and is certainly in keeping with the motion. I intend to recognize the gentleman so we will not go—

Mr. DENNIS. That is all the gentleman is concerned with. I thank the gentleman.

The CHAIRMAN. I recognize the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, before the clerk reads the amendment, the gentle lady from Texas has pointed out that there is a little confusion in the language here. I would like merely to limit the amendment to read "Witnesses before the committee shall be examined in executive session" and eliminate the rest of the material there. I will explain why, if I can discuss the motion, Mr. Chairman.

Mr. DENNIS. Mr. Chairman, reserving the right to object, I think the gentleman should explain before we consent.

Mr. CONYERS. All right. I think that the language here essentially contradicts its intention. It says "Where that testimony in public session would not violate any rule of the House." Well, we are arguing that we go into executive session. What we really intended was that there could be public sessions for any witnesses where we determined that it would be appropriate to do so. What I am saying here is that we should just move for executive session, period. I would like to correct the amendment to accordingly read and I would like to delete the rest of that material.

The CHAIRMAN. In other words, as I understand the gentleman, the gentleman only offers the amendment with that limited section.

Mr. CONYERS. Precisely.

The CHAIRMAN. It is up to the author of the amendment how he treats it.

Mr. CONYERS. Exactly. I did want to clear it up where we do not have all this language, Mr. Chairman. On line 11 after 1974. "Witnesses before the committee shall be examined in executive session."

In support of this amendment, which I think is crucial to rounding out Mr. Thornton's motion, obviously, we have all discussed at some length the critical consideration of today's work before us in addition to who shall the witnesses be, under what circumstances shall they be heard. As one who has advocated openness at every possible point. I would like to modify this position now to suggest those reasons that lead me to think that at this part of the impeachment proceedings, it would be more sensible for us to be in executive session. The reasons are as follows:

First of all, it would give an unfair view of the proceedings in terms of the American people, examining only those witnesses that we will be calling for the very limited purposes that they are going to be called for. They will not be roving over the full range of the issues and the testimony. But I think there is something that we might keep in mind. There may not be the complete release made of the materials that we have already agreed to release by July 2. That may or may not be a possibility. I think we should remember that.

There could be defamatory material coming from some of the witnesses, especially those whom we are not certain what they are going to testify to, even within the restrictions of the rules that we have set



forth. So it just seems to me, Mr. Chairman, that good common judgment, in view of the fact that we have released the materials, that after the witnesses, we are going to in fact have open hearings. I am one who hopes we will be able to have the consideration of the articles done in public and in full view of those who would want to know what our reasons are for supporting or opposing them. I would urge that each member very carefully consider this very important position and I hope that you will arrive at the conclusion to have executive session for the 7 days in which we call the witnesses and the Thornton motion would be the most logical way to proceed.

Mr. SEIBERLING. Would the gentleman yield?

Mr. CONYERS. I would yield if I have any time to the gentleman from Ohio.

Mr. SEIBERLING. I am wondering if the gentleman has considered the rule, and I am looking for it in the manual but have not found it yet. The rule is that in order to close a particular session, the vote must be taken at the start of that session and we have not yet started the session.

Mr. CONYERS. This is merely advisory or as a matter of policy. I am quite agreed to the fact that we would have to specifically vote on it.

Mr. EDWARDS. Would you yield?

Mr. CONYERS. Yes, I yield to Mr. Edwards.

Mr. EDWARDS. And you understand, because I understand, that in the event that the committee feels it needs more witnesses after this period, we will discuss it and if reasonable, we will go for more witnesses.

Mr. CONYERS. I think the gentleman from Arkansas has indicated that that is implicit in his motion, yes.

Mr. EDWARDS. I would not want to support it unless that is an understanding.

Mr. CONYERS. I will yield to the gentleman from Arkansas if he wants to underscore that.

Mr. THORNTON. I would like to state that this committee has continuing authority over these proceedings as long as we are engaged in the inquiry, and certainly I think that that authority does continue. We are trying to establish here a framework under which our committee can move forward in an orderly way to accomplish the work that we have been charged with. That is what the motion deals with.

Mr. CONYERS. Right.

Mr. Chairman, concluding, we do not want the American people to think that this is a trial and that the President will be subject to a second trial if there should be one after our judgment and the Congress' at a later date. It could very well be quite confusing that somehow or other, this is implicitly unfair, that there were two trials in which lawyers argued before the committee about the guilt or innocence of the President now under question.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I want to express strong opposition to the adoption of this amendment. I think it would be a egregious

mistake on our part to adopt this amendment and to close our sessions with regard to the testimony of witnesses.

Now, I respect the gentlemen who want to guard the privacy of witnesses and I supported keeping our hearings, our initial presentation, in executive session, including the presentation by Mr. St. Clair. But we have now made that record, we have now authorized that entire record to be made public, and it is public, or it will be public. It is all going to be in the public domain. And to suggest that we are going to guard the privacy of any testimony or any person by the adoption of such an amendment is just completely erroneous. In the first place, the witness, when he leaves the room, is going to relate or is free to relate whatever he wants to to the public. The TV and news commentators will comment with regard to selected materials that are revealed here in the course of our meeting.

Furthermore, we are not going to guard the privacy of this, but I am sure that we want to and we will make this entire record public, so that the most you could say would be that we would be delaying for a matter of minutes or a matter of days at the most the full release to the public.

Now, to suggest that the public is going to be misled because they will not understand what is going on here or that they will misinterpret because we are only having a limited amount of testimony is to misjudge the public, to underestimate their intelligence. They know what has been going on and they have been reading the papers and studying the transcripts and getting a great deal of information from other sources and they will, in effect, have the entire record before them. They will be able to judge. But I will tell you what they will not be able to judge. They will not be able to judge the responsible action we are taking here if we keep our doors closed and they only get dribs and drabs and get it from the press and the TV commentators instead of getting it from the full light of exposure which the public is entitled to.

I have witnessed a number of members of this committee who are today apparently willing to vote for this amendment who have before argued that we should be before the public, that we should let the public in on what we are doing. I think the public is entitled to know. We let them know with regard to the Ford hearing and there were some rather awkward situations there, I would say. But we are going to either charge the President or we are going to exonerate the President in what we do here. To suggest that this is some kind of a preliminary hearing, that we are something less than a grand jury, we are going to have something less than probable cause, is also to mistake our function, too, because we are either going to have to come forward with some kind of charges that are substantial, that are convincing and persuasive as far as our colleagues are concerned and the American people, or we are not going to come forth with any meaningful charges at all.

So it seems to me, Mr. Chairman, that we should now, at this time, let the public in, let them see what we are doing, let them hear what the witnesses are testifying to. The counsel for the President has requested that we have open hearings. If we want to be fair and open with him and with the President whose cause is being adjudged here,

it seems to me we can demonstrate that kind of fairness by having open hearings, which is the pattern, which is the direction in which the Congress has moved, and rightly so.

So I say that we should not take any action which would give us the appearance of any kind of star chamber proceeding.

MR. DENNIS. Mr. Chairman?

MR. McCLORY. We should have the kind of open hearing——

MR. DENNIS. Oh, come on.

MR. McCLORY [continuing]. The kind of open hearing which we have promised and which the public is entitled to.

THE CHAIRMAN. Ms. Jordan.

MS. JORDAN. My question was answered by the Chair.

THE CHAIRMAN. Mr. Rangel.

MR. RANGEL. Mr. Chairman, I have some questions as to whether or not this is the appropriate time to be closing meetings which are going to be held in the future. It is my understanding that the rules provide that we should have the meetings public until such time during that meeting we decide to go into executive session.

But, more importantly, while I should think we should have public meetings, I have not seen anything suggested either by the President's counsel or by the mover of the motion, the gentleman from Arkansas, that would indicate that we intend to get any testimony that would violate even past existing rules of confidentiality.

I would at this time think that once we found out what witness, Mr. Butterfield, for example, if what counsel expect to get from him is what is to be the public record of how the White House is structured, I would be a little shocked to believe that any of us would be bound by any rules of confidentiality as to who was in charge at the White House. And in looking over some of the information that Mr. St. Clair wanted to get from suggested witnesses, or unwilling witnesses, even though it may shock the sensitivity of some people on this committee, we have had some members that agreed that we can take it by stipulation and not behind closed doors.

So, I do not know whether point of order is appropriate at this point in time, but I hope that the mover might consider raising these questions, based upon what we expect to get from witnesses, regardless of who calls them, rather than be closing hearings and not really be receiving anything that offends the sensitivity of anybody.

MR. SEIBERLING. Mr. Chairman, I desire to make a point of order against this amendment. And I might as well make it right now.

MR. DENNIS. Too late.

THE CHAIRMAN. The point of order comes too late.

MR. OWENS. Mr. Chairman?

MR. SEIBERLING. Mr. Chairman, the amendment has not been moved yet, has it?

THE CHAIRMAN. But the amendment is already being debated.

MR. OWENS. Mr. Chairman?

MR. DRINAN. Mr. Chairman?

MR. SEIBERLING. If it violates the rules——

MR. DRINAN. Mr. Chairman, a point of order. I move to table the resolution, the amendment. I move to table the amendment.

MR. CHAIRMAN. I have not recognized the gentlemen. Mr. Owens,



Mr. OWENS. Thank you, Mr. Chairman.

Unlike my friend from Michigan, I have a position consistent with my past circumstances and my past positions, and therefore, I suppose exhibit a circumscribed mind, but I think that it is inconsistent for us to have exposed the vast record of evidence that we did yesterday, and then move, without knowledge of any defamatory or degrading testimony to be offered, to close these hearings. Was the gentleman from Ohio correct, Mr. Chairman, or counsel, if you prefer to refer to counsel, that this has no binding affect upon the committee at all, but each session must be closed by open vote of the committee prior to every session of the committee?

The CHAIRMAN. If the gentleman is referring to meetings, the meetings would be open meetings unless they are closed by vote of the committee.

Mr. SEIBERLING. Would the gentleman yield?

Mr. OWENS. Just a minute. But a hearing of the committee, when witnesses were to testify, would this resolution today, would this amendment today have the effect of closing, without further vote prior to each I will say session, prior to every hearing? Will it then be necessary to revote or will this have the binding effect of closing those hearings?

The CHAIRMAN. If this amendment were adopted, witnesses would be heard in closed session.

Mr. OWENS. Well, Mr. Chairman, it seems like to me that I would like to associate myself with the very able remarks of the gentleman from New York. It seems like to me that we ought to deal with this matter in the same way that we dealt with the witnesses brought before the committee last fall during the time of the hearings of Mr. Ford to be the Vice President. We dealt selectively with witnesses. If it is offered that they will offer testimony which will tend to defame or degrade, then pursuant to rule 11 we are under an obligation to close that hearing.

But short of that it seems like to me that it would be very unwise for the committee to bind itself at this point.

Mr. SEIBERLING. Would the gentleman yield?

Mr. OWENS. Yes, I yield to the gentleman from Ohio.

Mr. SEIBERLING. To answer your question, rule 11, clause 27(f) (No. 2) says that you cannot close a session, close a hearing except by a vote taken in open session at the start of the hearing and I submit that this is a closed session and you cannot take that vote up. And if my point of order is out of order, this would still violate the rules of the House.

Mr. OWENS. The Chairman has just ruled, as I understand it, that that was true as to meetings but not to hearings.

Mr. SEIBERLING. Well, I will read it to you if you want.

The CHAIRMAN. The Chair would like to state that rule 11, paragraph 27 (No. 2) reads that:

Each hearing conducted by each committee or subcommittee thereof shall be open to the public except when the committee or subcommittee in open session, with a quorum present, determines by rollcall vote that all or part of the remainder of that hearings shall be closed to the public because the disclosure of testimony, evidence, or other matters to be considered would endanger the national security or would violate any law or rule of the House of Representatives.

Mr. OWENS. Then, Mr. Chairman—

The CHAIRMAN. The Chair states that at this time we are presently in a meeting and considering the question as to whether or not those witnesses who would be called during the time of hearings would be called in closed session, and this committee could properly consider this question now.

Mr. OWENS. Mr. Chairman, then I move to table the amendment of the gentleman from Michigan.

Mr. SMITH. Vote.

Mr. BUTLER. Rollcall.

Mr. MARAZITI. Rollcall.

The CHAIRMAN. Will the gentleman withhold his motion to table?

Mr. OWENS. Yes, I will withhold briefly.

Mr. WALDIE. Mr. Chairman, may I be recognized?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. I would like to withdraw the motion at this time, with unanimous consent, of course.

The CHAIRMAN. Is there objection?

Mr. MARAZITI. Objection.

The CHAIRMAN. Objection is heard.

Mr. HUNGATE. Mr. Chairman, I move to table.

The CHAIRMAN. The question is on the motion to table.

Mr. DENNIS. Rollcall.

The CHAIRMAN. Well, the Chair is going to be exact, and a rollcall is demanded, but there has to be a show that more than one-fifth of the members present would demand that the vote be taken by rollcall vote.

Mr. DENNIS. Well, then, let us call for hands then, Mr. Chairman.

Mr. RAILSBACK. Let's have the vote first.

The CHAIRMAN. One, two, three, four, five, six.

A sufficient number, and it is a motion to table, subject to a call of the roll, and the clerk will call the roll.

All those in favor of the tabling motion, please say aye, and all those opposed, no. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

[No response.]

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. Aye.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. Aye.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. MCCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. I pass temporarily.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Pass temporarily.  
 The CLERK. Mr. Mayne.  
 [No response.]  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. Aye.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.  
 The CLERK. Mr. Froehlich.  
 Mr. FROELICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.



The CLERK. Mr. Latta.

Mr. LATTI. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

Ms. JORDAN. Mr. Chairman, I ask unanimous consent to change my vote.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. You don't need unanimous consent. He has not reported the vote yet.

Ms. JORDAN. He has not reported.

The CLERK. Ms. Jordan will be recorded as voting aye.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I would like to be recorded as voting no.

The CLERK. Mr. Kastenmeier is recorded as voting no.

The CHAIRMAN. Mr. Wiggins wishes to be recorded. He passed.

Mr. WIGGINS. If I could have a clarification for me to actually understand what the motion is, is this a motion to table?

The CHAIRMAN. This is the motion to table the amendment of the gentleman from Michigan.

Mr. WIGGINS. A motion to table to motion to go in——

The CHAIRMAN. The amendment of the gentleman.

Mr. WIGGINS. All right, I vote aye.

The CLERK. Mr. Wiggins votes aye.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. I vote aye.

The CLERK. Mr. Fish votes aye.

Mr. Chairman? Twenty-five members have voted aye, 12 members have voted no.

The CHAIRMAN. And the motion to table is agreed to.

Mr. McCLODY. Mr. Chairman, I have an amendment.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. McClory.

On line 14, after the word 1974, strike the period and insert in lieu thereof the following: “, unless extended during the hearings by action of the Committee.”

Mr. McCLODY. I discussed this with you. All this does, all this does is that if the committee decides during the hearings to extend the time that the committee can take such action, it gives a little flexibility to it, and I do not think it does any offense.

Mr. BROOKS. Would the gentleman yield?

Mr. McCLODY. Yes.

Mr. BROOKS. Would the gentleman yield?

Mr. McCLODY. Yes, I yield to the gentleman.

Mr. BROOKS. I am not opposed to this amendment, but I would like to point out, in all candidness, that the committee has the full authority at any time to extend the hearings or call additional witnesses, and I think it is redundant and I think it is kind of foolish to be saying that the committee has the authority to act either to extend the hearings or to call additional witnesses, to adopt new rules, to change

the procedures. And really, we should not, we should not in everything we do say that the committee has the authority to extend hearings or to call additional witnesses.

Mr. McCLODY. I thank the gentleman.

Mr. FROELICH. Would the gentleman yield?

Mr. McCLODY. The only point is we would have to call a meeting in order to do this if we do not put it in the resolution, so what I am suggesting is that during the hearings if we decide, we do not have to give notice and call a formal hearing and that is the only purpose of it.

Mr. DENNIS. Would the gentleman yield?

Mr. McCLODY. Yes, I yield. I move the adoption.

Mr. DENNIS. Will the gentleman yield?

Mr. McCLODY. Yes.

Mr. DENNIS. It may be that the gentleman's amendment helps a little, but I am inclined to agree with the gentleman from Texas. Mr. Brooks. Obviously, we can extend the hearings any time we want to. What is really needed is a motion to strike this language which puts the terminal date in and that is what I would like to see the gentleman or somebody else propose here. I cannot get very enthusiastic about the gentleman's amendment. I do not think it does much to clarify the obvious.

Mr. McCLODY. Well, I thank the gentleman for his suggestion. I am trying to avoid a confrontation here, and to retain the target date and yet give us a little bit of flexibility to the committee during the hearings without having to call a meeting, and I move the adoption of the amendment. I move the previous question, Mr. Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois. All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it and the amendment is agreed to.

Mr. WIGGINS. Mr. Chairman?

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. I have an amendment at the desk.

The CHAIRMAN. The clerk will please read the amendment.

The Clerk [reading]:

Amendment by Mr. Sandman.

Following line 9, add the following additional witnesses: Charles Colson, John Mitchell, H. R. Haldeman and on line 11, strike the period and add "and no witness shall be examined by the committee for more than 1 day."

Mr. SANDMAN. Mr. Chairman, we discussed this previously, and the attempt here is to accommodate everybody and to allay the one fear that you are going to use up all of the time on just one or two witnesses and not take up the others. This will meet the date that you would like to have.

Second, it will accommodate an area where you can have as many witnesses as can be heard within a 7-day period and you do this by way of restricting the fact that no witness can take more than 1 day. I think it is a fair compromise.

Mr. RANGEL. Would the gentleman yield for a parliamentary inquiry?

Mr. RAILSBACK. Would the gentleman yield?

Mr. RANGEL. Would your amendment be subject to the McClory amendment?

Mr. SANDMAN. No. My amendment takes full force and effect as is.

Mr. RANGEL. Well, I mean would that be unless extended during the hearings by action of the committee?

Mr. SANDMAN. It could do that, sure. The committee can change anything by majority vote.

Mr. RANGEL. Well, I had assumed that, but obviously Mr. McClory did not, so you now would have this be subjected to a further amendment that we limit it to 1 day unless it is extended during the hearings by the action of the committee?

Mr. RAILSBACK. Would you yield?

Mr. HUNGATE. Would the gentleman yield?

Mr. SANDMAN. I yield to the gentleman from Illinois 1 minute, half a minute.

Mr. RAILSBACK. This is just a perfecting amendment, because there is an error, there is an error in the amendment offered by Mr. Sandman, and that is it does not strike out the three names down below. In other words, if you are going to move them up you have got to strike them out down below.

Mr. SANDMAN. I do not think you have to do that at all. In fact, I do not want to do that. I am only adding three witnesses that have been talked about to his preferred list up in the first section. The others we can do as suggested by staff.

Now, I understand this is acceptable to the gentleman from Arkansas, and I yield to the gentleman from Arkansas.

Mr. THORNTON. I thank the gentleman from New Jersey for yielding. We did have an earlier discussion concerning this second half of the amendment, which is proposed here and with regard to that item which I believe is severable. I have stated that I would have no objection to the addition of language to indicate that no witness should be examined for more than 1 day and, indeed, I do not have any objection to that portion of the amendment offered by the gentleman from New Jersey.

However, I think it must be severed, because I do strongly believe that it is more appropriate to continue the proposal as contained in my original motion, that with regard to the witnesses who are included in the second list, that they be subject to interviews, examination, and a procedure which has been discussed here today for determining whether their testimony may be necessary. I would request.

The CHAIRMAN. Would the gentleman yield?

Mr. SANDMAN. Sure.

The CHAIRMAN. I am a little confused at this point.

First of all, we had accepted the amendment of the gentleman from Illinois which would not make it in order that instead of requiring that there be a committee meeting, that we could extend and the committee would be able to during the course of a hearing extend the time. Now, that is appropriate.



But, my confusion arises at where your three names are added, and whether you strike out the other names, and whether this comes after, within the purview of the time limitation set on July 12, 1974, that the time is finalized on that date, because if I understand your amendment, if we were to call more witnesses, all you would do here would be to mean that all you do is not give more than 1 day for each witness. But, if we are going to be going on beyond the 8th day, the date that the member has suggested, then we could have 12 and it would be 12 days and we could have 13 and it would be 13 days.

Mr. SANDMAN. I am not suggesting that, Mr. Chairman. I am suggesting here that we held to the eight. We start out with it where we have not more than 1 day for each witness. Now, in Butterfield's case, for example, I cannot see how he can take more than a couple of hours. It is altogether possible that you can run 8, 10, 12, or as many as you want. The one thing that you cannot do is to use more than 1 day for each witness. And this I do only so that we can accommodate everybody and reach the deadline as you want.

Ms. HOLTZMAN. May I ask a question?

Mr. SANDMAN. I yield to the lady from New York.

Ms. HOLTZMAN. I thank the gentleman for yielding. Is the purport of your amendment even if say Mr. Mitchell and Mr. Haldeman were to advise the committee that they would take the fifth amendment if they were called that you would still insist that a subpoena be issued and that they be called before the committee?

Mr. SANDMAN. Oh, yes.

Ms. HOLTZMAN. Is that the purport of your amendment?

Mr. SANDMAN. I want them here.

Ms. HOLTZMAN. Thank you.

Mr. WIGGINS. Would the gentleman yield?

Mr. SANDMAN. I yield to the gentleman from California.

Mr. WIGGINS. I want to make two points. I somewhat disagree with my colleague from New Jersey on the propriety of calling a witness if advised by counsel that if called he would take the fifth amendment. But that does not excuse this duty of the committee, the committee's duty to subpoena that witness. I do not know the reasons yet for Mr. Mitchell's reluctance to appear before this committee, and if it conflicts with his vacation schedule, that is one thing, and if he does not want to appear for other reasons, that may be another thing.

But, I do think we ought to subpoena him, and after he is under subpoena, his counsel should be satisfied formally that if his client is called to testify, whether he would take the fifth amendment, and if that answer is in the affirmative, then we ought not to submit that person to the burden of asserting his privilege to every question. That is my opinion.

Second, I want to direct the attention of the gentleman from New Jersey to the form of his amendment. His amendment leaves untouched the further resolved paragraphs of the pending motion. That paragraph contains the name of Colson, Mitchell, and Haldeman, which the gentleman has added to the first paragraph. In other words, he has not struck those three names. If they remain in the second paragraph, it seems that those witnesses are subject to the requirements of the language immediately preceding their names; namely, that they

be interviewed, and that the determination as to whether they be witnesses be left to the ranking member and to the chairman. Is that the intention of the gentleman from New Jersey?

Mr. SANDMAN. No. I would agree that those three be stricken from the bottom, because you have got them up in the top category.

Mr. WIGGINS. If that is the gentleman's intention, if he would ask unanimous consent to amend his amendment accordingly, I would have no objection to it.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SANDMAN. Could I ask for unanimous consent, Mr. Chairman, to make an amendment to my amendment which would strike the same three names—Colson, Mitchell, and Haldeman—from the remainder of the resolution.

The CHAIRMAN. Well, the question then that I must address to the gentleman from New Jersey is if you still adhere to the lines, then I don't know where you come with the question of 1-day witnesses and whether that eliminates the provision that the committee shall hear the testimony of these and other witnesses within 7 full working days of hearings, concluding on July 12, 1974.

Mr. SANDMAN. Yes. It comes after the word "1974."

The CHAIRMAN. Well, I am asking does the gentleman contemplate that there is still included in his suggested amendment that sentence which reads that the "committee shall hear the testimony of these and any other witnesses within 7 full days of hearings, concluding on July 12, 1974"?

Mr. SANDMAN. Yes, that remains in there, Mr. Chairman. This is the most important thing we are trying to accomplish now. One, a right to call all of the witnesses that everybody thinks they want; and second to achieve a terminal date that you are after. I think it is an entirely fair compromise.

The CHAIRMAN. The gentleman is asking unanimous consent to revise his amendment.

Mr. SANDMAN. The addition, the amendment to the amendment that I have suggested would strike the three names that I have suggested.

All right. The amendment would read as follows now. Following line No. 9, you add the following additional witnesses: Charles Colson, John Mitchell, H.R. Haldeman, and on line 11, strike the period and add "and no witness shall be examined by this committee for more than 1 day," and strike the same three names from the list at the bottom of the page; namely, Charles Colson, John Mitchell, and H. R. Haldeman.

Ms. HOLTZMAN. Mr. Chairman, reserving the right to object—

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Reserving the right to object, I would like to ask the gentleman from New Jersey if his unanimous-consent request is not agreed to, does that mean that these three persons would not appear before the committee unless the chairman and the ranking minority member agree?

Mr. SANDMAN. No. The eight witnesses I have suggested would appear by subpoena before the committee.

Ms. HOLTZMAN. But it would still be subject to the second clause; namely, that the persons would have to be interviewed in advance of a determination by the chairman and the ranking minority member that they be called?

Mr. SANDMAN. No.

Mr. RAILSBACK. Would you yield?

Ms. HOLTZMAN. I will be happy to if the gentleman will answer my question.

Mr. RAILSBACK. Yes.

Mr. SANDMAN. That would be true if I didn't get a unanimous consent, surely.

Mr. RAILSBACK. I think if you will yield, the concern is that the three names that are left at the bottom of the page would be subject to the preceding paragraph which requires an interview and an advance determination by the chairman and the ranking minority member. I would just suggest that if you do not think it is proper to do it this way, we will offer an amendment to do just that.

But, I think if we can get unanimous consent, you know, I think it saves us some time.

Ms. HOLTZMAN. Well, since the gentleman has told me that will be the interpretation, and since I disagree with that position, I mean I agree with the interpretation but I am opposed to the position, I will object.

Mr. WIGGINS. But, before you object, will you yield just a moment?

Ms. HOLTZMAN. I yield.

Mr. WIGGINS. Clearly the gentlelady has a right to object to a unanimous-consent request, but it will simply result in the motion being remade by Mr. Railsback or me, and that is a waste of time, and I hope that the gentlelady will consider that before she does object.

Mr. FLOWERS. Mr. Chairman?

Ms. HOLTZMAN. Well, in that respect, then I would just like to ask one further question. Does not the gentleman, still reserving my right to object, does not the gentleman feel that it is more appropriate that in the event that there is going to be a claim of the fifth amendment privileges, that this not become a public matter so that any rights to trial are jeopardized and, therefore, would it not be preferable not to have a subpoena issued to these persons, but rather to have that matter resolved formally before hand?

Mr. SANDMAN. Well, it is my understanding that Mr. Mitchell, for example, has refused to be interviewed, I am not satisfied with that. I want to know what he has to say, and I believe the only way we can accomplish that is by subpoena.

Mr. SARBANES. Mr. Chairman, reserving the right to object, am I correct that upon request that the components of this amendment are so dissimilar, that a request for a separate vote would be granted by the Chair as a matter of right?

The CHAIRMAN. I believe that the question may be devisable, may be separated.

Mr. SARBANES. Well, I would, unless I have an assurance that it is, either from the maker or from some authoritative source, I intend to object and have it proposed—and I realize that that will cause a delay, and it will be offered in a different context, but I do not believe that the apples and the oranges which are mixed in this amendment ought to necessarily be put to a vote together, if we can seek a separate vote.

Mr. WIGGINS. You are going to have a right to demand additional questions.



Mr. SARBANES. That is right. I want to know whether that will be accorded as a matter of right?

Mr. RAILSBACK. Will the gentleman yield?

Mr. SARBANES. Sure.

Mr. RAILSBACK. On this particular issue, it is more or less of a perfecting amendment to simply strike the three names at the bottom of the page. Even if that is defeated in his main motion, you still have the three names being placed along with the other five at the top. So, I do not think you would have to get a division. I think that what you would have to do is to get a division of the main motion. But, what we are talking about is kind of a perfecting amendment to simply strike out the three names from the bottom that will then be placed on the top.

Mr. SARBANES. Well, I understand that. But, if there is an objection, there would be a new amendment and it may come in two parts. It is divisable.

Ms. HOLTZMAN. Mr. Chairman, just to insure I had observed my right to object and I am going to insist on my objection at this point. And I think the question ought to be dealt with separately.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. You have objected, Ms. Holtzman?

Ms. HOLTZMAN. Yes.

The CHAIRMAN. Objection is heard.

Mr. RAILSBACK. Mr. Chairman? Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

Mr. RAILSBACK. I have an amendment.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I have an amendment to the pending amendment offered by the gentleman from New Jersey.

The CHAIRMAN. The clerk will read the amendment.

Mr. RAILSBACK. It is an amendment that would strike out, strike out the period following "day" in the last sentence and would add a comma in its place, and then the language, and strikes the name from the list at the bottom of the page. If I could be heard on that—well, I have already been heard on it.

The CHAIRMAN. The clerk will read the amendment.

Mr. RAILSBACK. No. I say strike the same names from the list at the bottom, and I am referring to Charles Colson, John Mitchell, and H. R. Haldeman.

Mr. RANGEL. Has this been circulated? Is this amendment at the desk?

Mr. RAILSBACK. Mr. Chairman, maybe I will just, if people don't seem to understand it, Mr. Sandman's amendment says this: "I have an amendment to the motion to call witnesses. Among the list of the five witnesses at the top of the page, I move that we add three additional witnesses as follows:

"One, Charles Colson, two, John Mitchell, three, H. R. Haldeman." And then he goes on to say "on line 11, strike the period and add 'and no witness should be examined by the committee for more than 1 day.'"

I would simply add to that a perfecting amendment that would strike those three names from the bottom of the page.

The CHAIRMAN. The amendment is in order.

Mr. RAILSBACK. I move the adoption of the amendment.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Illinois to the amendment offered by the gentleman from New Jersey. All those in favor, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it.

Mr. HOGAN. Mr. Chairman?

Mr. FLOWERS. Mr. Chairman, I have an amendment to the amendment. Mr. Chairman, I have an amendment to the amendment, the pending amendment. We are back to Mr. Sandman's as amended now, are we not?

The CHAIRMAN. Has the gentleman an amendment at the desk?

Mr. FLOWERS. I have got it at my desk, Mr. Chairman. I think I would call this a——

The CHAIRMAN. The clerk will read the amendment.

Mr. FLOWERS. Could I supply it for you, Mr. Cline, or would you like to do it?

Mr. Chairman, it is very simple what I offer. I offer to strike the language "within 7 full working days of hearings" and supply instead the language "with a view toward." I offer this amendment and the simple explanation of it is on the terminal question of Mr. Sandman's amendment, it might be impossible to finish in 7 working days when you have eight witnesses. I think this would be a perfecting amendment, and the least you could have is 8 working days.

Mr. SMITH. How would it read as amended?

Mr. FLOWERS. It would read however he said is as amended by whatever I said.

The CHAIRMAN. Well, let me inquire of the gentleman from Alabama, does the gentleman not understand that the 7 working days would not in any way change the termination date which is July 12, but that it is contemplated that even though we have eight witnesses, that eight witnesses none the less could not take more than 7 working days, but no one witness can take more than 1 working day? I do not see the inconsistency, and I do not see really the need. One is not exclusive of the other.

Mr. FLOWERS. I think if I may argue or disagree with the Chair, respectfully, it could be inconsistent one with the other. Each witness could require 1 full day. I do not think that is anywhere near possible, but it could.

The CHAIRMAN. If the gentleman would yield again, the gentleman has to be referred to the fact that this does not necessarily mean that any potential witness is required to be a witness for 1 full day. He may conclude within less than that time, and another witness may come on, and so we would conclude within 7 days.

Mr. FLOWERS. I understand that.

The CHAIRMAN. But with the gentleman's amendment, we would only be contemplating the possibility of concluding on the 12th.

Mr. FLOWERS. That is correct, Mr. Chairman.

The CHAIRMAN. Well, I would——

Mr. FLOWERS. I do not see, Mr. Chairman, if I might be heard further, that 1 day, the only other possibility is we might conclude on July 13 instead of July 12, with the eight witnesses and I do not see that that is cause for alarm on the part of anybody. I just am not sure that I agree with Mr. Sandman's total list there, either, but I think 1 day as a limitation on a witness, as to witnesses is fine, but I do think we ought to recognize that each witness could take a full day. I do not think it would, but it could. That is all.

The CHAIRMAN. Well, if the gentleman would yield further, the question is whether or not we are going to enlarge upon this list, and if it is contemplated that then someone would offer an amendment to add others, then I do not see that we could possibly, unless we eliminated the language as providing for one full day, that we would not get into another bind.

Mr. THORNTON. Mr. Chairman?

The CHAIRMAN. Well, the gentleman has still his amendment that he has offered and he has talked on it.

Mr. FLOWERS. I insist upon my amendment. I do not think that it is a major proposition, Mr. Chairman. It merely recognizes that there could possibly be one or two other witnesses and would leave the door open just that little bit where those witnesses could come in, if the majority of this committee decided to do it later on. I do not want to tie my hands to July 12 at this time.

The CHAIRMAN. The gentleman is further advised, I am reminded, that the McClory amendment would take care of that since the McClory amendment provides that unless the hearings are extended by a vote of the committee.

Mr. FLOWERS. It is rather a confusing proposition and I am not trying to cause a stir here. I do not see why there should be a stir about it. It is a very simple matter and I would insist upon my amendment, Mr. Chairman.

The CHAIRMAN. All right. The question——

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alabama to the amendment offered by the gentleman from New York as amended. All those in favor, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The Chair is in doubt. Will all those in favor of the amendment, please raise their hands.

[Show of hands.]

Mr. SEIBERLING. Mr. Chairman, I ask for a rollcall.

Mr. RANGEL. Why?

Mr. SEIBERLING. Because I want one.

The CHAIRMAN. All those opposed, please raise their hands; 15 for the amendment and 17 opposed.

Mr. FROEHLICH. Rollcall, Mr. Chairman.

The CHAIRMAN. A call of the roll is demanded and the clerk will call the roll. All those in favor of the amendment please say aye; all those opposed, no.

The CLERK. Mr. Donohue?



Mr. SMITH. Mr. Chairman, could we have the clerk read the amendment again at this point?

The CHAIRMAN. This is an amendment to the amendment offered by the gentleman from New Jersey as amended by the gentleman from Illinois.

Mr. SARBANES. What does the amendment do?

The CHAIRMAN. Does the clerk have the language?

The CLERK. The clerk is not sure.

As I have it, on line 13, after "within"—Mr. Flowers, are you striking "within"?

Mr. FLOWERS. I am striking the language "within 7 full working days of hearings," and inserting therein, "with a view toward."

Mr. SMITH. Mr. Chairman?

Would the gentleman from Alabama yield?

Mr. FLOWERS. Surely.

Mr. SMITH. "With a view toward concluding on July 12, 1974"? Is that it?

Mr. FLOWERS. Yes.

Mr. SMITH. "Unless extended by action of the committee."

Mr. WIGGINS. There is some confusion down here as to whether or not the impeachment proceedings are subject to the rule in *Shelley's* case. You may wish to comment about that.

The CHAIRMAN. I would imagine that could go on interminably.

The CLERK. Shall I continue with the calling of the roll?

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

The CHAIRMAN. By proxy no.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. No.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.

Mr. HUTCHINSON. No.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

[No response.]

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman, 18 members have voted aye; 19 have voted no.

The CHAIRMAN. The amendment is not agreed to.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, I have an amendment at the desk to the amendment offered by the gentleman from New Jersey, Mr. Sandman.

The CHAIRMAN. The clerk will read the amendment.

The Clerk [reading]:

Amendment offered by Mr. Hogan.

Following line 9, the motion to call witnesses, add the following: "additional witnesses:

"Paul O'Brien, William O. Bittman."

Mr. HOGAN. Mr. Chairman, this merely gives to Mr. St. Clair the witnesses which he requested. With the two resolutions offered by the gentleman from Arkansas would have given him, the two added by the amendment offered by the gentleman from New Jersey, this amendment adds the additional two he requested. I just think in fairness, he ought to be accorded an opportunity to call those witnesses that he thinks are important for him to present his case for the President.

I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland to the amendment offered by the gentleman from New Jersey as amended by the gentleman from Illinois. All those in favor of the adoption of the amendment, please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. Those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. FROELICH. Record vote requested, Mr. Chairman.

The CHAIRMAN. The clerk will call the roll. All those in favor, please say aye; those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

The CHAIRMAN. By proxy, no.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Present.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

[No response.]

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.



Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. No.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. MCCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. HUTCHINSON. By proxy, aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. Aye.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. Aye.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.  
 The CLERK. Mr. Latta.

Mr. LATTI. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Waldie votes "No."

Mr. EDWARDS. I vote aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. The clerk.

The CLERK. Twenty-one members have voted aye; 17 have voted no.

The CHAIRMAN. The amendment is agreed to.

Mr. RAILSBACK. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. This amendment having passed, I wonder if we would not be well advised to strike—I think we have to strike everything following—everything including "resolved further" to the bottom of the page.

Mr. SEIBERLING. Only the amendment to the amendment passed.

The CHAIRMAN. The Chair will recess for a half hour.

[Brief recess.]

The CHAIRMAN. The committee will come to order. At the time that the chairman recessed the committee, we had been at the point where the gentleman from New Jersey had offered an amendment which was amended by the gentleman from Maryland as amended by the gentleman from Illinois.

Mr. RAILSBACK. I think that was the amendment. The question is on the amendment offered by the gentleman from New Jersey as amended.

Mr. COHEN. Mr. Chairman, what is the gentleman inquiring about?

Mr. OWENS. I have an amendment at the desk.

The CHAIRMAN. The question is already being put to the committee.

Mr. OWENS. Mr. Chairman, I respectfully request the right to offer my amendment.

The CHAIRMAN. The chairman is not going to recognize the gentleman. The gentleman's motion has come too late. I know the gentleman has been trying, as he states, to press the chairman to get this amendment, but I think the time has come to vote on the amendment as amended.

Mr. OWENS. I respectfully request the right to offer it. I submit it is in order.

The CHAIRMAN. The gentleman from Utah.

Mr. OWENS. I thank the chairman.

This is an amendment, Mr. Chairman, to the amendment offered by Mr. Sandman, which strikes from his list of five names the name of Charles Colson, and which would return Mr. Colson's name to the list of those who may be called subject to their having been interviewed previously by counsel, and at the determination of the chairman and ranking minority member.

I do think that there is a differentiation between the name of Charles Colson and the other four names put forward as presently shown on the amendment of Mr. Sandman. The testimony, as I understand it, of these witnesses which Mr. St. Clair requests will be limited in scope to the offer of proof which Mr. St. Clair makes. We do not know

what Mr. Colson will testify to and he ought to be examined first by counsel and interviewed and that information offered to the committee or to the chairman or ranking minority member before they decide to call him. I dislike a party line vote. I agree we ought to lean over backward where possible to give Mr. St. Clair a right or the opportunity to present witnesses, and the other four witnesses limited to the scope of the offer of proof I think are relevant and can be done in an expeditious manner and will not put us back from our projected termination date.

Ms. JORDAN. Question, Mr. Chairman.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. The gentleman from Alabama.

Mr. FLOWERS. Mr. Chairman, I must disagree with my friend from Utah. I think it is absurd for us to decide right here and now—and that is what we are doing, make no mistake about it—that we are not going to call Charles Colson to be a witness before this committee. He potentially could shed more light on our problem than any other witness that we have heard from. I just do not think that we ought to push him off to a possible trial in the Senate, take a chance at that point on when in a questionable case it might be made a heck of a lot better by virtue of his testimony here. I think precisely because we do not know what he will testify to is the major reason that we need to get him before this committee under oath and ask him the personal questions.

Mr. FISH. Mr. Chairman, may I be heard on the amendment?

The CHAIRMAN. Mr. Fish.

Mr. FISH. If I understood the statement in behalf of the motion, the gentleman indicated to me that this was one of Mr. St. Clair's choices as a witness. I did not think that was true.

Mr. OWENS. Mr. Colson is not. The other four are, as I understand it.

Mr. FISH. Mr. Colson is not. There is also some question as to whether he had been interviewed. Could I ask Mr. Doar how many days Mr. Colson has been interviewed, if at all, by the staff.

Mr. DOAR. We have interviewed Mr. Colson for 2 days.

Mr. FISH. For 2 days?

Mr. DOAR. Yes.

Mr. FISH. Thank you very much.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Utah. All those in favor of the amendment, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it. The noes have it. The amendment is not agreed to.

Mr. FROEHLICH. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. FROEHLICH. When the meeting went back to order, you stated there was an amendment pending by the gentleman from Illinois. Is that incorrect?

The CHAIRMAN. No, that amendment was agreed to.

Mr. FROEHLICH. One further inquiry. If an amendment is not offered to the Sandman amendment, can an amendment be offered



to the resolution of the gentleman from Arkansas adding an additional person on line 9?

The CHAIRMAN. Such an amendment can be offered.

Mr. FROELICH. To either place? Either to the Sandman amendment or directly to the resolution after the Sandman amendment is disposed of?

The CHAIRMAN. After the Sandman amendment is disposed of, it would be in order to add the name to the original motion.

The question now occurs on the amendment of the gentleman from New Jersey as amended by the gentleman from Maryland as amended by the gentleman from Illinois. Mr. Railsback. All those in favor of the amendment as amended, please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The Chair is in doubt.

Mr. FROELICH. Rollcall, Mr. Chairman.

The CHAIRMAN. Call of the roll is demanded. The clerk will call the roll. All those in favor of the amendment, please signify by saying aye; all those opposed, signify by saying no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. No.

The CLERK. Mr. Owens.

Mr. OWENS. Aye.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.

Mr. McCLORY. Aye by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. McCLORY. Aye by proxy.

The CLERK. Mr. Hogan.

Mr. McCLORY. Aye by proxy.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report the vote.

The CLERK. Nineteen members have voted aye; 19 members have voted no.

The CHAIRMAN. The amendment is not agreed to.

Mr. FROEHLICH. I have an amendment, Mr. Chairman.

The CHAIRMAN. Mr. Froehlich.

Mr. FROEHLICH. Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.  
The CLERK [reading]:

Amendment offered by Mr. Froehlich.

"Following line 9, add the following additional witness: John Ehrlichman."

Mr. FROEHLICH. Mr. Chairman, I think it is obvious that John Ehrlichman is one of the important individuals in this whole investigation and there are some areas, particularly in my mind, dealing with the milk fund contributions that I think need investigation. I would hope that the committee would see fit to add him to this list. I move the adoption of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin. All those in favor of adoption of the amendment, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

Mr. FROEHLICH. Rollcall, Mr. Chairman.

The CHAIRMAN. A call of the roll is demanded. The clerk will call the roll. All those in favor, please say aye; opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. Present.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.

The CLERK. Ms. Holtzman.



Ms. HOLTZMAN. No.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.

Mr. McCLORY. No by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Sandman.

Mr. SANDMAN. No.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. McCLORY. Mr. Hogan aye by proxy.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATT. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

Mr. MANN. Mr. Clerk, I vote aye.

The CHAIRMAN. The clerk will report the rollcall.

The CLERK. Mr. Chairman, there were 14 members voting aye; 24 voting no.

The CHAIRMAN. The amendment is not agreed to.

Mr. FISH. Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

Ms. HOLTZMAN. Mr. Chairman, a point of order?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, I would like to make a point of order. I believe that this amendment has been previously decided upon by the committee.

Mr. FISH. Mr. Chairman, could we have the amendment read?

Ms. HOLTZMAN. I want to reserve my rights considering all of the rulings we have been having.

The CHAIRMAN. The gentlelady's right will be reserved. The clerk will report the amendment.

The CLERK [reading]:

Amendment offered by Mr. Fish.

Following line 9, add the following additional witnesses: Charles Colson, John Mitchell, H. R. Haldeman, and on lines 19, 20, and 21, strike the names, Charles Colson, John Mitchell, and H. R. Haldeman.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I believe that the substance of this has already been voted upon.

Mr. FISH. Could I be heard on the point of order?

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. I recognize the author of the amendment.

Mr. FISH. Mr. Chairman. I think this is substantially different from the original amendment of the gentleman from New Jersey, who had additional language, which read "and on line 11, strike the period and add, 'and no witness shall be examined by the committee for more than 1 day.'"

It also does not embrace the additional witnesses in the gentleman from Maryland's amendment, which was included in the amendment to the gentleman from New Jersey's amendment when we voted on the amendment of the gentleman from New Jersey. Therefore, there has been no separate vote on this question of the first three—Mr. Colson, Mr. Mitchell, and Mr. Haldeman—being moved from, up to the first category, the must category. I see a substantial difference between this and Mr. Sandman's amendment.

Ms. HOLTZMAN. Mr. Chairman, if I may be heard further.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. As I understood it, the only difference to do with that time period of providing a 1-day per witness limit, which I understand Mr. Sandman agreed to.

Mr. FISH. Mr. Chairman, the point is there was no separate vote on that issue.

The CHAIRMAN. The Chair is prepared to rule that although the difference is not substantial, there is a difference, since the gentleman does not provide for the time limitation within his amendment. Therefore, his amendment is in order. The point of order is not sustained.

Mr. THORNTON. Mr. Chairman, may I speak just a moment?

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York. All those in favor of the amendment, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes".]

The CHAIRMAN. The Chair is in doubt.

Mr. FISH. Could we have a record vote, Mr. Chairman?

The CHAIRMAN. The clerk will call the roll, since a record vote is demanded. All those in favor of the amendment, please say aye; all those opposed, please say no. The clerk will call the roll.

The CLERK. Mr. Donohue.  
 Mr. DONOHUE. No.  
 The CLERK. Mr. Brooks.  
 Mr. BROOKS. No.  
 The CLERK. Mr. Kastenmeier.  
 Mr. KASTENMEIER. No.  
 The CLERK. Mr. Edwards.  
 Mr. EDWARDS. No.  
 The CLERK. Mr. Hungate.  
 Mr. HUNGATE. No.  
 The CLERK. Mr. Conyers.  
 Mr. CONYERS. No.  
 The CLERK. Mr. Eilberg?  
 Mr. EILBERG. No.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. No.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. Aye.  
 The CLERK. Mr. Mann.  
 Mr. MANN. No.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. No.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. OWENS.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. McCLODY. Aye by proxy.  
 The CLERK. Mr. McClory.  
 Mr. McCLODY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.



Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. McCLORY. Aye by proxy.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman, 19 members have voted aye; 19 members have voted no.

The CHAIRMAN. The amendment is not agreed to.

Mr. LATTA. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. LATTA. Mr. Chairman, I would like to know whether it would be in order to move that we terminate this exercise in futility and that you just go ahead with what you have decided on in caucus?

Mr. RANGEL. I support that, Mr. Chairman.

The CHAIRMAN. The Chair has agreed to recognize the gentleman from Indiana. There are several other members who have amendments.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I do have an amendment at the desk which is in the nature of a substitute to the motion to call witnesses which the clerk could read.

The CHAIRMAN. The clerk will report the amendment.

The CLERK [reading]:

Amendment offered by Mr. Dennis in the nature of a substitute motion to call witnesses:

Resolved that the committee call before it the following witnesses: Alexander Butterfield, Herbert Kalmbach, Henry Petersen, John Dean, Fred LaRue, Charles Colson, John Mitchell, H. R. Haldeman, Paul O'Brien, William O. Bittman, Manyon M. Millican, Sherman E. Unger, E. Howard Hunt.

The examination of such witnesses before the committee shall commence on July 2, 1974, and shall continue from day to day thereafter, as determined by the committee, until completed.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. Chairman and my colleagues on the committee, this motion in the nature of a substitute poses some questions which are before us in one motion and I suggest to you that it is perhaps an important a motion as we are likely to have here, because in my judgment, it poses the question of whether or not this committee is sincere in its desire to conduct a fair and thorough investigation of this very important matter now before us.

Now, the motion essentially does three things if I may have the attention of the committee for a moment. It moves up, it seems all the witnesses in the motion, but it moves up the five who were down below as maybe witnesses to certain witnesses. That is the first thing it does.

The second thing it does is add three additional witnesses which are not on the President's list or on the committee's list but are on my list. The third thing—it ought to be on your list, may I add—the third thing it does is that it knocks out this time limitation and says we start on July 2 and we run till we get through.

Now, I am not going to try to justify the first five witnesses, because everybody is agreed that we ought to call them. So I will just skip that.

On the second five witnesses, in the manner of Mr. Thornton, I would like to make a few observations.

Mr. Colson, as Mr. Flowers has well said—I do not think I need to dwell on it—I just do not see how we can conduct this investigation without calling Colson. It is true, nobody knows what he is going to say for sure. Mr. St. Clair does not want to call him his witness, Mr. Doar does not want to call him his witness. But I kind of think this committee would like to know what he is going to say. At least I would.

Let me point out to you that he is in a position—somebody may think I am a little partisan for the President here. I am trying to get an investigation. This man is in a position if he wants to, taking his plea of guilty the other day, to give evidence which might suggest that the President was an accessory to an offense, something we have never explored. In the papers, he has theories in the papers. How can we possibly not call this fellow and see what he has to say?

Mitchell—Mitchell got the call from Dean on the 20th of March. He got the call from LaRue about the alleged payment on the 21st of March. He is supposed to have been there the next day when they talked about whether Hunt had been taken care of or not.

Haldeman—he is present on the 21st of March at the meeting. He heard the conversation. He called Mitchell and asked him to come down from New York the next day.

O'Brien—O'Brien is the man who gets the first approach from Mr. Hunt, according to the evidence now before this committee. O'Brien is the man who transmits the message to Dean from Mr. Hunt.

Millican—he is the guy who carries the envelope with the alleged payment in it.

Unger is the only man who fixes the date as March 21, which you have to admit is important in this picture, whether this payment was made on the same day as the conversation or not.

And Hunt is the alleged blackmailer.

Now, I have said right along, and I think it is so obvious, and I think it would be true for anybody who really wants to make a thorough examination of this thing, that this whole transaction on the 21st of March is the crux of this case. Was it blackmail or was not it? Was it a payoff or was not it? Here is the fellow who made the demand. Here is the fellow who got, allegedly, the money or something. Do you not think a reasonable investigation would want to know what he has to say?

And Bittman, of course, he is the fellow who represented him and whose mailbox is supposed to be used and so on.

Now, I do not want to belabor this thing. All I am saying—a number of these are very short witnesses because they only bear on a few points—some of them. But they are very important witnesses. All these witnesses are important and I just cannot see—I cannot see in the first place how this motion hurts anybody or anything. You get at the worse some evidence you do not need. I cannot buy the idea at all that because some of these people have testified under oath before other bodies, where we had nothing to do with it, could not examine them or control them or anything, that that has anything to do with it: all the evidence we have had has been before other bodies. I say to you that neither Mr. Jenner or Mr. Doar or any member of this committee, if he were practicing law and were charged with conducting this case, would think of going forward without calling at least these witnesses.

Now, of course I expect them to be interviewed before you bring them in here. But we are not partisan, we are not one-sided.

The CHAIRMAN. I advise the gentleman that his time has expired?

Mr. DENNIS. I thank the chairman. All I say in conclusion is if you want an honest, fair, thorough investigation of this proposition that we are here for, you ought to support this substitute and be done with it. I submit it to you on that basis.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. I move the previous question.

The CHAIRMAN. The question is on the amendment by the gentleman from Indiana.

Mr. DENNIS. May I ask for a rollcall.

The CHAIRMAN. The gentleman demands a rollcall. All those in favor of the amendment, please say aye; those opposed, please say no. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.



Mr. EILBERG. No.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. No.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. Aye.  
 The CLERK. Mr. Mann.  
 Mr. MANN. No.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. No.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. McCLODY. No by proxy.  
 The CLERK. Mr. McCLODY.  
 Mr. McCLODY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. McCLODY. Aye by proxy.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. Aye.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead?

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman, 15 members have voted aye, 23 members have voted no.

The CHAIRMAN. The substitute is not agreed to.

Mr. LOTT. Mr. Chairman?

The CHAIRMAN. Mr. Lott.

Mr. LOTT. Mr. Chairman, I have a motion at the desk but I am not going to offer it.

The CHAIRMAN. You have an amendment?

Mr. LOTT. It is obvious to me that the vote is going to be a straight party line vote, but I would like to state at this point if I may take this minute to do this: I am very disappointed that this has developed into a partisan-type vote. I support the vehicle Mr. Thornton has offered and I commend him for the way he has handled it. I think we are nitpicking over getting these witnesses and I am just very distressed that we have evolved, dropped off into this type of situation where we are not going to call these witnesses, the very minimum of 10 witnesses. I am just very disappointed and I yield back my time.

Mr. McCLORY. Will the gentleman yield to me?

Mr. LOTT. I yield to the gentleman.

Mr. McCLORY. I thank the gentleman, because I am also disappointed and I am also disappointed that this has taken on a substantially partisan character. I think that is something we should have avoided and I think it is unfortunate that it did.

Let me just say this, though. I think there is this consolation. The name, Mr. Colson, which is in your amendment, plus the names, Mr. Haldeman and Mr. Mitchell, are in the resolution which is offered by the gentleman from Arkansas and I am hopeful that counsel, together with the chairman, will see fit to call these witnesses and include them among the witnesses examined by this committee. If that is done, our objective will have been attained though we had this unfortunate action today.

Mr. LOTT. I yield to Mr. Butler.

Mr. BUTLER. Thank you. I have an amendment at the chairman's desk.

Is there an amendment on the floor, Mr. Chairman?

The CHAIRMAN. No; Mr. Lott has the floor for purposes of offering an amendment. If Mr. Lott wants to offer your amendment.

Mr. LOTT. Mr. Chairman, I yield to the gentleman from Indiana.

Mr. DENNIS. I thank the gentleman for yielding. I would just like to say very briefly that I appreciate the courtesy of the chairman in giving me an opportunity to move and argue my amendment and his

courtesy in general. But I would like to add my own feeling of disappointment to that expressed by the gentleman from Mississippi, because I say in all sincerity that it is perfectly obvious to me, and I think I owe it to everybody to say so, that there has been a concerted effort here on the part of the majority to call as few witnesses as possible and to cut them off as quickly as they could. I think that is a very, very unfortunate way in which to conduct an inquiry of this importance and magnitude. I thank the gentleman for yielding.

Mr. LOTT. Thank you, Mr. Chairman. I yield back the balance of my time.

The CHAIRMAN. Before recognizing any other member, the Chair would like to state that while the members are expressing their disappointment, let me say how much I express my disappointment that, after having convened a meeting of the so-called advisory group yesterday and having come to some understanding, which I think provided an orderly vehicle—and I want to make my position clear that I have not suggested that we call any witnesses. I was happy to go along with having the witnesses who could really provide testimony. I think that there were reasonable suggestions made and I was willing to go along.

I am happy to state that under the circumstances, I was willing to go along with not only the five witnesses—they were not witnesses that were suggested by the majority. These were witnesses that were suggested in the main all along by members of the minority and the counsel for the President. Those witnesses, none of them, has been excluded. I do not see where all of this disappointment really comes from when there was just a reasonable request that after counsel had interviewed these potential witnesses, they then would be presented to the committee on the part of the ranking minority member's and the chairman's having made some determination which the committee could have overruled.

I do not see how anyone could have been fairer and I do not see how the majority could have stated that it did not support a proper and fair position all along the line.

Mr. CONYERS. Mr. Chairman?

Mr. McCLODY. Mr. Chairman, would the gentleman yield?

The CHAIRMAN. Yes.

Mr. McCLODY. Mr. Chairman, I want the chairman to know that I voted against adding the name of Mr. Ehrlichman, which was not a name which was considered by the advisory group. I voted for the inclusion of Mr. Colson, which I thought was a name which the advisory group agreed upon. I voted for Mr. Haldeman and Mr. Mitchell being included as witnesses, but nevertheless, I stated that while I was disappointed that they were not included as witnesses, I was satisfied that they might be called as witnesses and hoped that they would be called as witnesses following interview and your agreement. So I do not think that there was any departure from our agreement, Mr. Chairman, as made by the advisory group.

Mr. MANN. Mr. Chairman?

The CHAIRMAN. Mr. Mann.

Mr. MANN. Mr. Chairman, I yield to no member of this committee in my desire to develop the necessary and relevant evidence, the best



available evidence for the determination of this important decision that confronts us. Now, early in the debate, it developed that perhaps there was an interest in calling witnesses rather than an interest in allowing the President's counsel to present evidence in accordance with the rule. I will read that rule to you:

Rule B 3: Should the President's counsel wish the committee to receive additional testimony or other evidence, he shall be invited to submit written requests and precise summaries of what he would propose to show; in the case of a witness precisely and in detail what it is expected the testimony of the witness would be if called. On the basis of such request and summaries and of the record then before it, the committee shall determine whether the suggested evidence is necessary or desirable to a full and fair record in the inquiry and if so, whether the summaries shall be accepted as part of the record or additional testimony or evidence in some other form shall be received.

I found no willingness to comply with that rule. On the other hand, I suspect the motivation that prompted a contrary indication that we should have here a circus or an exploration or that we should go beyond what the President's counsel has asked for. I am not going to be a party to any action which prevents the President's counsel from presenting the evidence that he has requested to present. In my judgment, it will be done.

In that connection, I direct these parliamentary inquiries to the chairman. Mr. Chairman, will we have the opportunity to vote on whether or not to receive the evidence of the witnesses listed in part II of the Thornton motion—Mr. Colson, Mr. Mitchell, Mr. Halderman, Mr. O'Brien, and Mr. Bittman? Will you and the ranking minority member make a report to us of your recommendation in time for us to make that determination?

The CHAIRMAN. The Chair can assure the gentleman that he will after he has had an opportunity to discuss this with the counsel who would have interviewed these witnesses.

Mr. MANX. In that connection, I would consider it appropriate if the Chair recommended at that time or the Chair and the ranking member and counsel recommended that we accept the statements as proposed by President's counsel and as contemplated by rule B 3. I do not think, therefore, that the effort of some of us to restrain the number of witnesses, which would possibly involve us in a prolonged, repetitive, cumulative exercise, a participation by both counsel that is not contemplated or not necessarily promoting the seeking of truth that we are after—if the President's counsel had other points that he wanted to bring out, I think we can rely upon him to have suggested that he needed that opportunity. He did not do so. For one, I will do all that I can to make certain that the points that he has sought to make will be made, either through stipulation as contemplated by the rule or through my affirmative vote for their testimony.

The CHAIRMAN. I would like to advise the gentleman further that so far as the Chair was concerned, the Chair viewed these potential witnesses as witnesses that unless counsel had any real reason or justification for not calling them, that the Chair was prepared to recommend that they be called.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Yes, Mr. Cohen.

Mr. COHEN. I have an amendment at the desk.

The CHAIRMAN. The Clerk will report the amendment.

The CLERK [reading]:

Motion by Mr. Cohen.

Amendment to motion to call witnesses: Strike the words "chairman and ranking minority member" in lines 16 and 17 insert the word "committee."

Mr. COHEN. Mr. Chairman, I think I discussed this about 8 hours ago when we first started debating the entire issue of calling witnesses and I will not spend much time debating it much further. I will simply say I think this has perhaps been one of the worse days this committee has gone through in this history of our inquiry and I do not think it bodes very well for the future in terms of the nonpartisanship with which we are supposed to approach this issue.

I think I also tried to make it very clear in this matter that I do not intend to have other people control my vote on any given issue. That includes Mr. Doar, Mr. Jenner, and with a great deal of respect to the chairman and the ranking member, Mr. Hutchinson, you cannot vote for me come July when I have to cast a vote on this matter. Therefore, the purpose of the motion is to retain for myself and others members the full authority with respect to the calling of witnesses.

I was impressed with the gentleman, Mr. Mann, when he started quoting from the rules of procedure on B-3. It would indicate that the committee shall determine the calling of witnesses, not the ranking member, not the chairman. I simply by this amendment would like to restore the full authority to the committee and not to the two members.

The CHAIRMAN. I would just like to advise the gentleman that instead of making it easier, he is going to make it a lot more difficult to call the witnesses that he would like to call. I think the Chair just advised the gentleman from South Carolina of his intentions and the ranking minority members would have been provided with the same intelligence from counsel and if they acted and there was any question on the part of the committee, then the committee would have acted. But I think that what you are doing—and I am going to advise you what you are doing is stating that each time you are going to consider any of these others, now, the committee will have to vote on them each time.

Mr. COHEN. I would like to have the committee vote on the individual witnesses that will be called. It is possible, I assume——

The CHAIRMAN. They would not be called unless the committee decides to call them, and you have first got to get a meeting to call them.

Mr. COHEN. That is exactly right and I assume that after consulting with the counsel that the chairman and the ranking member might recommend two or three or those listed in part 2 or tier 2 and there would be no opportunity for the members to ask for additional witnesses, and if there is going to be an opportunity to ask for additional witnesses, it seems to me we arrive at it the same way and ought to vote on these witnesses and not simply delegate this authority to the chairman and the ranking member.

Mr. MANN. Would the gentleman yield?

Mr. COHEN. I yield to the gentleman from New York, Mr. Smith.

Mr. SMITH. I thank the gentleman for yielding. I would just like to point out that as we have said many times in this committee, the

committee I do not believe ever loses the power to vote on these matters no matter what the chairman and the ranking minority member might do. And I would suggest that perhaps the gentleman's amendment comes at the wrong time and since the committee never does lose the power to make a final decision that this amendment is unnecessary.

Mr. FROELICH. Would the gentleman from Maine yield?

Mr. COHEN. I yield to Mr. Mann.

Mr. MANN. I appreciate the gentleman's statement and he called to my attention something I meant to inquire about as a parliamentary inquiry later, and that is the matter of meetings versus hearings or the time at which we might have the opportunity to pass upon these matters. Mr. Chairman, can we have the assurance that when the chairman and the ranking member make a recommendation with reference to the testimony of the witness that it will be made under such circumstances that the committee can act on the matter?

The CHAIRMAN. The Chair will advise that even during the course of the hearing that a vote can be taken.

Mr. MANN. I started to inquire whether or not the language in paragraph 3 which says that the committee shall hear testimony of, and other, any other witness, within 7 full working days, whether or not that carried with it the idea that we could pass upon that question at hearings?

The CHAIRMAN. On what?

Mr. MANN. On the question of other witnesses.

The CHAIRMAN. That question would be properly before the committee.

Mr. MANN. At the hearing?

The CHAIRMAN. Before the committee hearing.

Mr. MANN. Very good. Thank you.

Mr. KASTENMEIER. Question.

The CHAIRMAN. The question is on the amendment of the gentleman from Maine. All those in favor of the amendment please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. And the noes appear to have it.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. And the amendment is not agreed to. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, I have an amendment at the desk. It is the amendment to strike.

The CLERK [reading]:

Amendment by Mr. Wiggins.

The CHAIRMAN. The clerk will read the amendment of Mr. Wiggins.

The CLERK [continues reading]:

On lines 12 through 14 strike the following sentence: "The committee shall hear the testimony of these and any other witnesses within 7 full working days or hearings concluding on July 12, 1974."

Mr. WIGGINS. Mr. Chairman, I ask unanimous consent that the amendment encompass the amendatory language to that sentence; that is, the McClory amendment that was amended, as you recall, during the debate and after the preparation of the amendment. And it



is my intention to offer a motion to strike the entire sentence including the amended language.

Mr. SEIBERLING. The McClory amendment did not apply to that paragraph.

The CHAIRMAN. The gentleman is recognized.

Mr. WIGGINS. Thank you, Mr. Chairman. I am not going to take a lot of time on this but I have felt all along ladies and gentlemen, that it was inappropriate for us to fix a finite time limit for the conclusion of the taking of testimony. I am mindful that the language now is precatory in nature and is not a command but it still is deluding to the public and frankly it is deluding to ourselves. We ought to begin at the beginning, proceed carefully and thoroughly to the end. And if that end is on the 10th of June or July, so be it. But, if it is on the 14th, so be it as well.

It also recognizes, Mr. Chairman, a problem that we ought to be mindful of. I am told that Mr. St. Clair, counsel for the President, is to be engaged on the 8th day of July in the Supreme Court to argue a motion, or rather an appeal of great importance to this committee. And under normal circumstances I am sure courtesies would be accorded to counsel to make that appearance and to make that argument. And frankly the day of the 8th is in jeopardy because of that conflict in scheduling beyond the power of Mr. St. Clair to control.

Rather than to play with a meaningless date, I simply strike the language and the members should understand as I understand, that we are going to try to get through as quickly as possible. But, let us not kid each other and hold out to the public that it is going to be done on a precise date. That is my reason for striking the language.

The CHAIRMAN. Will the gentleman yield?

Mr. WIGGINS. Of course.

The CHAIRMAN. Of course the gentleman knows that the counsel for the President does not necessarily have to be Mr. St. Clair. The President has many counsel and while he may be engaged, I am sure the President can call on many other counsel to represent him in a matter of fundamental importance to him and that is this inquiry that is going on.

Mr. WIGGINS. Well, I recognize that the discretion will probably be vested in the Chair. But I will tell you that would be pretty tough discretion for you to exercise to deny to the President, the chief counsel, the man who has participated to the extent possible at all stages of these proceedings, to proceed in his absence by reason of a conflict with the Supreme Court on a given date. I think my amendment is realistic, and reasonable, and I urge its support and for my purposes I am prepared to move the question.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California.

All those in favor of the amendment please signify by saying aye.

[Chorus of "ayes".]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. FROELICH. Mr. Chairman?

The CHAIRMAN. The noes have it and the amendment is not agreed to. Mr. Froehlich.

Mr. FROEHLICH. Mr. Chairman, I have an amendment at the desk, the last one given including lines 22 and 23.

The CHAIRMAN. The clerk will report the amendment.

The CLERK [reading]:

Amendment offered by Mr. Froehlich.

Following line 9 add the following additional witnesses, Paul O'Brien, William O. Bittman.

On lines 22 and 23 strike Paul O'Brien, William O. Bittman.

Mr. FROEHLICH. Mr. Chairman?

The CHAIRMAN. Mr. Froehlich.

Mr. FROEHLICH. I move the adoption of the amendment. I would assume the gentleman from Arkansas would accept this amendment inasmuch as we have already voted on it when the Sandman amendment was before us, and it was adopted on a 21 to 17 rollcall vote. And we have discussed the need for these individuals at that time and also when Mr. Dennis was arguing this amendment so I will not go into the merits of it.

Would the gentleman from Arkansas accept the amendment?

Mr. THORNTON. If the gentleman would yield, I would not be able to accept the amendment. I would like to say that it was my belief that the motion I originally introduced was a fair and equitable way for this committee to proceed to call those witnesses for whom a demonstrable need had already been made, and I stated in my beginning remarks the calling of witnesses should not be passed upon the names of witnesses who might seem to be necessary to be called, but upon a showing of information which those witnesses might be able to bring to us. And I do not think that without further review by the staff, the chairman and the ranking minority member that we can definitively say that this committee just now, that these two witnesses are required rather than the alternative of presenting their proof of evidence by some other means.

Mr. WIGGINS. Question.

The CHAIRMAN. The question is on the amendment—

Mr. RAILSBACK. Would the gentleman yield?

Mr. FROEHLICH. I yield.

Mr. RAILSBACK. Could I just ask one question of the sponsor of the Mayne amendment? Do you suppose that it could be that Mr. St. Clair, if permitted to interview or permitted to examine, could perhaps go into different areas of inquiry other than what Mr. Doar or Mr. Jenner might go into and do you not think that that is the most significant reason to see that he gets a right to examine? What we are doing under your proposal is we are delegating to our staff the right to interview and then a determination to be made after Mr. St. Clair has requested that they be called for a certain purpose. Should he not be permitted to interview or examine?

Mr. THORNTON. If the gentleman from Wisconsin will yield to me, in order that I might respond?

Mr. FROEHLICH. I yield.

Mr. THORNTON. I would say certainly Mr. St. Clair is well familiar with the people whose names are before us. He has an opportunity

to interview them, and under the rules of this committee to make an offer of proof under those rules and to call or to recommend the call of witnesses. I think that it is very important for all of us to adhere to the standards that my colleague, Mr. Mann, referred to a moment ago. I think that all members of this committee have a desire to fully develop the material, the evidence, so that we may base our decision upon a factual basis.

But, I do not think that it is appropriate to call witnesses where their testimony would be merely cumulative of material which has already been obtained.

Mr. BUTLER. Question.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin.

All those in favor of the amendment please signify by saying aye.  
[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. And the noes appear to have it.

Mr. FROELICH. Rollcall, Mr. Chairman.

The CHAIRMAN. A call of the roll is demanded and will the clerk call the roll? And all those in favor of the amendment please say aye and all those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. WALDIE. No by proxy.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.



The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. McCLORY. No by proxy.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. Aye.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. Aye.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.  
 The CLERK. Mr. Latta.  
 Mr. LATTA. Aye.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. No.

Mr. EDWARDS. Mr. Chairman, while the vote is being counted I want to make a happy announcement, that the legislation that was reported out of this committee on the Woodsie Owl was signed by the President yesterday.

The CHAIRMAN. The clerk will report the vote.

The CLERK. Sixteen members have voted aye, 22 members have voted no.

The CHAIRMAN. The amendment is not agreed to. There being no—

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. I have an amendment. Would you like for me to read it? On line 17 strike the first word, which is the word "and," and insert the word "or".

The purpose of this amendment, Mr. Chairman, is to give the discretion which is vested in class 2 witnesses to the chairman and the ranking minority member, to the chairman or the ranking minority member. As a member of the minority, I would feel better if our ranking minority member would have the same right, would not have to agree with the chairman, or the chairman would not have to agree with the ranking minority member before we call one of the class 2 witnesses before the committee, and it takes it out of the conjunctive and inserts the injunctive or the disjunctive.

The CHAIRMAN. The gentleman from South Carolina.

Mr. MANN. A question, Mr. Butler. You would not deny that the committee has the right to pass upon the decision of either or both would you on the question of the calling of a witness?

Mr. BUTLER. If I understood your question, it sounded all right to me.

Mr. McCLORY. Would the gentleman yield?

Mr. MANN. The possibility is under the rule as written the two of them together could make arrangements for the calling of a witness, and we in effect would have to overrule rather than one alone making that decision and us having to act. I think that the recommendation should be brought to the committee no matter who.

Mr. BUTLER. Well, I would prefer it that way but I do not think we have quite that choice at the moment.

Mr. McCLORY. Well, would the gentleman yield?

This puts me in an awkward position since I do have Mr. Hutchinson's proxy and I am not certain what his reaction would be. But I have this feeling that the rule now requires that if there is a disagreement the matter must come to the committee and the committee would make the decision; am I correct?

The CHAIRMAN. That is correct.

Mr. BUTLER. If that is the chairman's understanding?

The CHAIRMAN. That is correct.

Mr. McCLORY. So I would think it would be redundant and since we already have a rule regarding that where there is disagreement.

Mr. BUTLER. Having that assurance from the chairman, I will withdraw the amendment and I apologize for the delay.

Mr. RANGEL. Question.

The CHAIRMAN. The question now occurs—

Mr. WIGGINS. Mr. Chairman, I have a motion at the desk, an amendment at the desk. That is No. 2.

The CHAIRMAN. Is this an amendment to the Thornton motion?

Mr. WIGGINS. Yes; I thought I would do it that way, Mr. Chairman. Read it and see what you rule.

Mr. RANGEL. Mr. Chairman, when is the proper time to raise a point of order?

Mr. WIGGINS. Wait until he reads the amendment.

The CHAIRMAN. As soon as the clerk reads the amendment.

The CLERK. Resolved that the staff of the committee shall prepare and submit written interrogatories addressed to the President requiring the sworn answers by the President concerning his knowledge, statements, actions, and intentions with respect to matters relevant and necessary to the committee's inquiry.

Ms. JORDAN. Mr. Chairman, I would like to object.

Mr. WIGGINS. Mr. Chairman, if the—

Mr. RANGEL. I raise a point of order, Mr. Chairman.

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I am not going to use the words that Mr. Wiggins admonished me that I should not use today, but since we are talking about a witness list, and it is obvious that Mr. Wiggins' amendment does not concern the calling of a witness, I believe it is not in order at this time.

The CHAIRMAN. Does the gentleman wish to be heard on this?

Mr. WIGGINS. Well, Mr. Chairman, I considered two alternative courses here. One was to add this as a further resolved to the Thornton amendment, and that was the amendment which I had the clerk read, or alternatively, after the conclusion of the Thornton amendment, bring it up as a separate item. I frankly was concerned, Mr. Chairman, about protecting my rights to bring it up at all, and I wanted to seize upon the only game in town, which was the Thornton amendment at this time. I, of course, will submit to the question of its germaneness, but let me say, Mr. Chairman, that the subject of the Thornton amendment is the taking of testimony by specific witnesses. This deals with the obtaining of testimony by a specific witness but in a different form. I have to admit that. I do not understand, however, that the thrust of the Thornton amendment is as to the form of the testimony, but rather the main thrust is to taking of testimony from specific witnesses.

The CHAIRMAN. Well, the Chair is prepared to rule and the Chair will state that while this amendment of the gentleman from California addresses itself to the President, there is no suggestion in the witness list that the President is to be called as a witness. Together with that, this addresses itself specifically to the method of how witnesses, how a witness is to be called specifically and I would have to rule that such being the case the amendment is not germane and, therefore, sustain the point of order.

The question now occurs on the motion offered by the gentleman from Arkansas, as amended by the gentleman from Illinois.

All those in favor of the adoption of the motion please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it, the ayes appear to have it.

Mr. RAILSBACK. Rollcall.

The CHAIRMAN. Rollcall? A rollcall is demanded.

Mr. COHEN. Right.

The CHAIRMAN. A call of the roll is demanded and the clerk will call the roll.



All those in favor of the adoption of the motion of the gentleman as amended please signify by saying aye, and all those opposed, no.

The CLERK. Mr. Donohue.

[No response.]

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. WALDIE. Aye by proxy.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. Aye.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. Aye.

The CLERK. Mr. Hutchinson.

Mr. McCLORY. Aye by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. No.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

[No response.]

The CLERK. Mr. Dennis.

Mr. DENNIS. I vote an unenthusiastic aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. McCLORY. No by proxy.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The clerk will report the vote.

The CLERK. Mr. Chairman, 33 members have voted aye, 5 members have voted no.

The CHAIRMAN. And the amendment is agreed to and the motion is adopted.

Mr. HUNGATE. Mr. Chairman.

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Mr. Chairman, I have a motion at the desk. I move that the committee seek approval from the full House for the following resolution: Resolved, that in conducting hearings held pursuant to House Resolution 803, 93d Congress, the Committee on the Judiciary is authorized to proceed without regard to the second sentence of clause 27 F No. 4 of rule 11 of the rules of the House.

Mr. Chairman, rule 11, 27 F 4 reads in the second paragraph thereof which I think is the pertinent part to this resolution "All committees shall provide in their rules of procedure for the application of the 5-minute rule in the interrogation of witnesses until such time as each member of the committee who so desires has had an opportunity to question the witness."

The purpose of this, Mr. Chairman, as I understand, deals with the 5-minute rule so that we can proceed in the manner that counsel interrogate the members and will have a right to submit questions in

writing, and I understand that this has been discussed with the leadership on both sides of the aisle, on the committee, and in the House.

Mr. RAILSBACK. Mr. Chairman?

Mr. McCLODY. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I do not want to cut off debate, but I think what you are proposing is very, very meritorious and I support it. And I would like to move the adoption of it but I do not want to cut Mr. Dennis off if he has anything to say.

Mr. McCLODY. Mr. Chairman, would the gentleman yield to me? I would like to state on behalf of Mr. Hutchinson and myself that we have discussed this with the chairman, and it also has been discussed with the House Republican leadership and I am supporting the resolution.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. Chairman, I am not going to belabor the matter at all, but I am going to vote against this rule as a matter of principle. I recognize the difficulties to which the motion is addressed, but I think it is too bad to restrict our own privileges and prerogatives because of a fear that some members might abuse them or that some members would not know how to restrain themselves or anything of that kind.

I am not—Mr. McCloidy, if you would not mind I am making an argument to the chairman and to the committee.

The CHAIRMAN. Point of order.

Mr. DENNIS. I thank the chairman.

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I was just going to say that there are certain prerogatives that you have as a Member of this House and one of them is to exercise your rights under the 5-minute rule. There are also in my opinion certain prerogatives you have as a member of the bar and that is to be able to ask a question if you have some good reason to do it in a legal proceeding. I object as a matter of principle to surrendering both or either of those prerogatives simply because there is a fear on the part of some people, unjustified, I would suppose, that some of our members do not have enough good sense to regulate their conduct and their rights under those two prerogatives.

I do not think most people would abuse them. I am quite sure that I would not. But, I absolutely object to surrendering them and as a matter of fact, I personally, whatever the majority may do, am not going to vote away my rights in this fashion. Thank you, Mr. Chairman.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. The gentleman knows, however, that the gentleman's right to submit questions to counsel would be protected and preserved at all times?

Mr. DENNIS. I appreciate that, Mr. Chairman, and quite possibly I would often be willing to do that. But I will tell you that I have been practicing law for 30 years and I do not claim to be the greatest lawyer in the world. But I think I can ask a question once in a while



and might have some reason for it. And I am just not about to pass it up by a vote. You can take it away from me, but I am not going to do it.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. It pains me to have to disagree with my good friend from Indiana but I think that the motion of the gentleman from Missouri is eminently practical and very necessary under the circumstances and I support it.

Mr. MARAZITI. Mr. Chairman?

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Could I address a question to the gentleman from Missouri?

Assuming that this motion carries, and carries the House floor, is it your idea that the members would be precluded from submitting questions on the day of the questioning of a witness before this committee?

Mr. HUNGATE. Will the gentleman yield for a response?

Mr. FLOWERS. Surely.

Mr. HUNGATE. That would not be my idea. My idea would be a clear understanding that the questions are to be made in writing and submitted through counsel but recognizing what I think the gentleman from Alabama suggests, that sometimes some of the best questions occur to you while you are listening to the witness testify. And I would think, and my understanding is and the Chair will correct me if I am wrong, that the Chair would certainly give this a broad interpretation because there would be quite a sacrifice being made by each member giving up his right personally to question for 5 minutes each. And I suppose we are doing that because 5 times 38 is 3 hours and 10 minutes.

Mr. DENNIS. Would my friend yield?

Mr. HUNGATE. I would certainly think that the chairman would give that the broadest interpretation, that it has to be in writing but it could certainly be done that way and probably while the witness testified.

Mr. DENNIS. Would my friend yield?

The CHAIRMAN. The gentleman from Alabama still has the floor.

Mr. HUNGATE. He wants a response from the chairman.

Mr. FLOWERS. Yes. I yield to the gentleman from Michigan.

Mr. CONYERS. I would like to inquire is it not a little more consistent with the dignity of the committee to have these questions forwarded instead of to counsel to the chairman of the committee rather than to counsel? I think that would be more appropriate and not inconsistent with this motion. Would anyone object to that?

Mr. MARAZITI. I would object to that.

Mr. CONYERS. Well, I think that it would be a procedure that we ought to consider whether it is specifically set forth in this motion or not.

Mr. DENNIS. Would the gentleman from Missouri yield?

Mr. FLOWERS. I believe I have the floor.

Mr. DENNIS. Will the gentleman from Alabama yield?

Mr. FLOWERS. I am prepared to support the gentleman's motion but I think it is imperative that a member have at least the secondhand right to have his questions asked and I do not care whether he thought about them today or tomorrow, or on July 3. I think that a member of this committee ought to be able to submit that question either to the chairman or to the counsel and know as a matter of right that question was going to be asked.

The CHAIRMAN. The Chair wants to assure the gentleman that that will take place.

Mr. FLOWERS. That is all if I have that assurance. I yield to the gentleman from Indiana.

Mr. DENNIS. I simply want to observe and I am sure the Chair would see that it takes place too, but as a practical matter if the question occurs to a member during testimony, then he has to write it out and pass it up the line before he can get it asked and there is not really going to be much of an opportunity to do it with all of the best will in the world on the part of the chairman and everybody else.

Mr. FLOWERS. Well, I think that is taken care of by the Chair's obvious willingness to be liberal in constructing this and I will yield back the balance of my time.

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Point of inquiry. The Chair indicated and the gentleman from Missouri indicated that we could submit questions to counsel. Now I just want to be sure and see if I am correct in this interpretation that that would mean all counsel, including Mr. St. Clair, on questions of cross-examination?

Am I correct in that?

The CHAIRMAN. The gentleman is completely mistaken if he feels that the questions are going to be furnished to Mr. St. Clair by members of this committee. I would hope that the committee member recognizes that we have counsel and that we have not employed Mr. St. Clair as our counsel.

Mr. HUNGATE. Will the gentleman yield?

Mr. MARAZITI. Certainly.

Mr. HUNGATE. I thank the gentleman for yielding and I perhaps overstated the method in which it would be handed up, which is simply a mechanical thing, and also I would say to the gentleman from Michigan I would suppose that what I am trying to say is that the questions will be asked by counsel for the committee and I suppose that would be either Mr. Doar or Mr. Jenner, or maybe one of the other counsel would be working it. And whatever way would seem most dignified to the members, I suppose those questions could be forwarded and thank you.

Mr. MARAZITI. Well thank you very much. I am very happy and pleased about having this clarification, because when this was discussed with me I was given to understand that Mr. St. Clair could receive questions and therefore I cannot support this motion. I will not give up my right.

Mr. DANIELSON. Question.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, I have some very grave reservations, although I think the purport of this amendment is necessary. I think

it is clear to the committee that we have to deal with this, with the interrogation of witnesses expeditiously. But, along the lines of the questioning by Mr. Flowers I would like to ask the chairman what the procedure would be in the event that a question that you had submitted to counsel elicited a response that needed a followup? How would that take place? Would the member be entitled to submit another question?

The CHAIRMAN. Of course.

Ms. HOLTZMAN. To follow up. Well, I thank the chairman for his assurance.

The CHAIRMAN. The question is on the motion of the gentleman from Missouri. All those in favor of the motion please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes appear to have it. A call of the roll is demanded. The clerk will call the roll. All those in favor of the motion, please signify by saying aye; those opposed, no. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.



Ms. HOLTZMAN. No.

The CLERK. Mr. Owens.

Mr. OWENS. Aye.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. Aye.

The CLERK. Mr. Hutchinson.

Mr. McCLORY. Aye by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. No.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

[No response.]

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

Mr. DENNIS. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The clerk will first report the vote.

The CLERK. Mr. Chairman, 31 members have voted aye; 6 members have voted no.

The CHAIRMAN. The motion is agreed to.

Mr. DENNIS. Mr. Chairman, parliamentary inquiry on this subject.

The CHAIRMAN. Before other members are recognized, I would like to just remind the members that in order that they know just what dates we are discussing insofar as the 7 full working days are concerned so that we know, the dates are July 2, 3, 8, 9, 10, 11, and 12.

Mr. DENNIS. Mr. Chairman, parliamentary inquiry.

Mr. SMITH. Did I understand further the chairman to say if necessary during that period of time, we are going to work evenings if we have to?

The CHAIRMAN. Oh, yes. The understanding was within the 7 full working days and the announcement was made by the Chair that we would be available morning, afternoon, and evenings.

Mr. DENNIS. Mr. Chairman, may I make an inquiry?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

The motion we just passed has to go to the House, as I understand it. Is that correct?

The CHAIRMAN. That is correct.

Mr. DENNIS. I would like to respectfully request opportunity to submit a minority report.

The CHAIRMAN. The Chair is going to advise the gentleman from Indiana that there will be no opportunity for minority reports. It is intended that this be placed on suspension.

Mr. DENNIS. Well, if the chairman—

The CHAIRMAN. And it is the intention of the Chair, after having discussed this with the leadership on both side, that would come up on Monday.

Mr. DENNIS. I thank the chairman for that. I will be there and take such time as I may get under the rules to speak against it there.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I know it is late and I have a unanimous consent request. I ask unanimous consent that the chairman be authorized to send a letter to the President requesting that he send to this committee a response to those questions propounded by the Joint Committee on Internal Revenue Taxation in its letter of March 22, 1974. That is the letter that was sent by the joint committee on that date of the taxpayer, Mr. Nixon. I ask unanimous consent that the chairman send to the President a letter requesting response.

Mr. McCLORY. Mr. Chairman, I respectfully suggest that no notice of this is included, it is not on the agenda of this meeting. I object to the unanimous-consent request.

The CHAIRMAN. Objection is heard.

Mr. MEZVINSKY. Mr. Chairman, then I shall move—I have a motion at the desk.

Ms. JORDAN. Reserving the right to object. Mr. Chairman.

The CHAIRMAN. The gentleman will be advised that there is no such item listed on the agenda.

Mr. WIGGINS. Parliamentary inquiry, Mr. Chairman.

Mr. MEZVINSKY. Mr. Chairman, do I understand that to mean that under the category of witnesses and the whole problem of questions that should be raised, this is not in order to be raised at this time; is that right?

The CHAIRMAN. That is not in order to be raised at this time, since it is not listed on the agenda.

Mr. MEZVINSKY. Can I respectfully request when I can put this before this committee so that it is, so we can have this information which is vital and significant?

The CHAIRMAN. I would advise the gentleman that under the rules of the committee, if the gentleman sought to move for the consideration of this item and there were two-thirds voting in the affirmative, then the matter could be placed on the agenda. But it would take a two-thirds vote on the part of the members now present on his vote to place it on the agenda at this time.

Mr. McCLORY. Mr. Chairman, I move that the committee do now adjourn.

I withdraw that. I thought we were through with our business.

Mr. KASTENMEIER. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman, I would then move that we put this on the agenda at this time to consider your sending a letter to the President to answer the questions raised by the Joint Committee on Internal Revenue Taxation.

The CHAIRMAN. The question is on the motion of the gentleman. It will take, as I stated, a two-thirds vote in order to place it on the agenda.

Mr. MEZVINSKY. I think, if I may speak on that, Mr. Chairman, very briefly, it is a very simple request. It is simply a letter by you, the chairman, to the President asking him to respond to the questions that have been very specifically stated by the Joint Committee on Internal Revenue Taxation. I think it is a matter that, one, is significant; and two, should be pro forma.

Mr. WIGGINS. Parliamentary inquiry, Mr. Chairman.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I hope we will vote against this motion. This is something that if we are going to take action on it, it requires careful and thoughtful consideration. I am not—not knowing that the gentleman was going to propose this, I was not prepared to debate it. I think it is something that should be noticed and I think if the gentleman makes his request at the appropriate time, if it is something that is necessary and relevant to our hearing, it can be placed on the agenda at a regularly scheduled meeting.

First of all, I hope that the gentleman will withdraw his motion. Otherwise, I hope that the motion will be defeated.

Mr. WIGGINS. Will the gentleman yield?

Mr. McCLORY. Yes, I yield to the gentleman.

Mr. WIGGINS. I have an obvious interest in this, Mr. Chairman. I have circulated to the members early on in these proceedings a proposed resolution which dealt with the subject of interrogatories. It was ruled, as we all recall, out of order as an amendment to the Thornton resolution. Now, the chairman's action with respect to our colleague from Iowa indicates to me that if I were to offer a similar motion, it would also be out of order and that it would take a two-thirds vote to make it relevant and germane to this meeting.

Well, I think it is relevant and germane to this meeting and accordingly, the only way I could get my amendment before the body is to support Mr. Mezvinsky's motion and then to offer a substitute to that, because his motion, as I understand it, is directed only to the IRS responses and I personally believe that he should have that right and the committee may desire the information, but that it should not be so restricted.



Mr. McCLORY. Mr. Chairman, I think that I was recognized in opposition to the motion. I want to say that notwithstanding the interest of my esteemed colleague from California. I think that this requires being placed on a regularly scheduled meeting and I think it is something that we should consider thoughtfully in advance of taking action on it. I hope that the motion to place it on the agenda at this time will be defeated.

Mr. MEZVINSKY. Mr. Chairman, let me say that I will not delay this meeting, but I would hope that in fact, it would be on the agenda. Could I have at least some assurances that this matter could be put on an agenda in the very near future? I mean what kind of assurances can I get that this will not be delayed until after all the witnesses hearings are concluded, on which we have just had a timetable going through the 12th. If I could have at least some understanding that it could be considered before then, I certainly would withdraw the motion at this time.

The CHAIRMAN. If the gentleman will withdraw his motion, I would advise him that the only time that is going to be available to us is the time, I think, on Monday next, the first time that we could call such a meeting for the purpose of considering this matter. Then, of course, it would be in order as well for the gentleman from California.

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. I would also ask that counsel advise us before we take this action as to whether to propound an offer to the President as to what effect this would have on the subpoenas that we have issued and we continue to say that we are after the best evidence from the President, subpoena him, and get what he has. Now all of a sudden, are we going to change our mode of procedure and seek written interrogatories, which in my judgment would not be the best evidence.

The CHAIRMAN. I would hope—let me state this. Before the Chair agrees to set any time for any meeting for any such resolution, the Chair would like to have the opportunity to confer with both the gentleman from Iowa and the gentleman from California and counsel to try to ascertain just what the position would be regarding the question put by the gentlelady from Texas.

Ms. HOLTZMAN. Mr. Chairman?

Mr. MEZVINSKY. I will be glad to yield to the gentlewoman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MEZVINSKY. Well, in view of the discussion, I shall withdraw the motion at this time, with the hopeful assurance that we can have a meeting soon and have it resolved.

The CHAIRMAN. May I state that Mr. Kastenmeier has a matter which is, I am advised, not controversial and emanates from his committee. I think that there is a question of some urgency and Mr. Kastenmeier would like to present this to the committee. I understand that he will not be taking any time, more than a couple of minutes, to explain it.

Mr. KASTENMEIER. Thank you, Mr. Chairman. That is correct.

I am reluctant to impose upon the full committee's time in connection with this. I must ask unanimous consent, in order that it be taken up, for the immediate consideration of H.R. 7584, a bill to extend the life of a design patent constituting the design of the badge of the DAR.

which will in the ordinary course expire on July 12, 1974, in about 2 weeks.

Further, there is a subcommittee amendment correcting a typographical error on line 5 of the bill where 31,503 should read 21,053.

The action of the subcommittee supporting this measure is unanimous. It is not controversial. It has happened a number of times that this patent has been extended. There has never been any opposition to my knowledge. It was first granted on September 22, 1891. It is for a term of 14 years. It is one of the things that we in the Congress are required from time to time to do for this patriotic organization.

Mr. CONYERS. Would the gentleman yield?

Mr. RANGEL. Reserving the right to object, Mr. Chairman, what is this all about, Mr. Kastenmeier? What is this urgency and what is going to expire and how is it going to adversely affect these Daughters of the American Revolution?

Mr. KASTENMEIER. Irrespective of how one may feel about the organization in terms of its views, I would hope that every member of the committee would appreciate that this is a courtesy extending over many, many years.

Mr. RANGEL. What is it, though?

Mr. KASTENMEIER. It is a patent, a design patent. I can only show the gentleman. It is a wheel, a spinning wheel with hands and I guess a—

Mr. RANGEL. They cannot use this without legislation, that wheel?

Mr. KASTENMEIER. That is correct. They would not have the right to use it. They could not use it exclusively without the patent, which has been extended, I think, four times for periods of 14 years. It has to be done before.

Mr. RANGEL. It will not come up for another 14 years, right?

Mr. KASTENMEIER. That is right. You and I will long since be gone from the Congress.

Mr. RANGEL. I have no objection, Mr. Chairman.

Mr. CONYERS. Reserving the right to object on a more serious note, to whom have they denied access to their facilities recently?

Mr. KASTENMEIER. We did not go into that. The gentleman knows that this is not a matter of concern as far as whatever actions the DAR may have taken or whatever positions they may have taken over the years. We do this for many organizations whether or not every member of Congress agrees with the various positions. We hope that—various organizations, of course, improve in terms of their attitudes. But nonetheless, I do not think that is what is at issue here.

Mr. McCLORY. Will the gentleman yield?

Mr. CONYERS. I am reserving an objection and I am very reluctant to place it at this time, but I do not think I have very much other alternative in view of the fact that this is not timely brought. Many other matters here have not been put on the agenda and with the greatest deference and respect for my fellow subcommittee chairman, I feel that I am going to lodge an objection.

Mr. KASTENMEIER. I am sorry to hear that. I think it is unnecessary. The patent will expire. Presumably, we can revive it. My feeling is that—

Mr. CONYERS. Might I inquire further?

The CHAIRMAN. Will the gentleman yield?

Mr. CONYERS. Is this objection going to prevent them from ever having this patent? You mean this objection will preclude them from having a patent?

Mr. KASTENMEIER. No, I cannot accord the gentleman that great a power.

Mr. CONYERS. Then I object.

The CHAIRMAN. The objection is heard. Ms. Holtzman.

Ms. HOLTZMAN. I very much appreciate the chairman's yielding to me. I had a question as to when a matter might be placed on the agenda. When we were discussing the issuance of subpoenas, it occurred to me that there was a subpoena that had not been considered by counsel. I did not offer an amendment at that time to include an additional one conversation because I wanted to discuss it and give counsel a chance to consider it and therefore was not able to raise it at the appropriate point in the agenda. But I would like the opportunity to do so if there is another meeting scheduled to consider, for example, the motions by Mr. Mezvinsky and Mr. Wiggins. I wonder if the chairman might give me some assurance about that?

The CHAIRMAN. The Chair can merely state and the Chair does not at this time want to assure that such a meeting will be held. But I do want to state that if those matters are discussed, we will give the gentlelady an opportunity to discuss that matter as well.

Ms. HOLTZMAN. I thank the chairman.

The CHAIRMAN. Remember that the question of issuance of subpoenas was an item that was placed on the agenda only after there had been a failure to comply with specific requests. That is the matter that I think has to be borne in mind.

Mr. McCLORY. Mr. Chairman. Could I just say this?

Mr. Kastenmeier, through our counsel, did consult with Mr. Hutchinson, with me, and with Mr. Railsback, the ranking member on the subcommittee, and all agreed that there would be no objection to bringing this up at this meeting. I wish to assure the gentleman from Wisconsin if he wishes to move for a two-thirds vote to suspend the rules in order to place this on the agenda, I would expect to support it and my colleagues would support it.

Mr. KASTENMEIER. Will the gentleman yield?

Mr. McCLORY. Yes, I yield.

Mr. KASTENMEIER. I appreciate that very much, but I do not think it is, insofar as there is objection, we can pursue it in due course. The patent will expire, we will revive it. This would have been timely, though not utterly essential. It is more appropriate that we do it this way.

Mr. McCLORY. It is extremely difficult because of the impeachment inquiry we are conducting to take care of other legislation, especially that which has urgency. So I think we should make accommodations where we can.

Mr. MEZVINSKY. Will the gentleman yield?

Mr. RAILSBACK. Will the gentleman yield?

Mr. McCLORY. Yes.

Mr. RAILSBACK. I want to support your suggestion and say the chairman did hold hearings. There were several of us present. We ap-



proved it. We approved of the whole procedure. It seems to me it is timely. I am no big devotee of the DAR, yet I can understand how important this is to them. I would just suggest I think you will have good support over here. It might be worthwhile putting it on.

Mr. MEZVINSKY. Will the gentleman yield?

Mr. McCLODY. Yes, I yield to the gentleman.

Mr. MEZVINSKY. Do we set it so that if the gentleman from Michigan wants to study the matter, if we consider it on Monday before we go into hearings, at least we will—would that be timely, and we could set up a meeting so we could consider that as well as other matters that maybe you want to consider?

The CHAIRMAN. The Chair would like to state that while I recognize that this matter is something that the gentleman from Wisconsin is interested in, nonetheless, I believe that considering that we have a lot of other important matters that are on the agenda or that may be on the agenda, I can hardly think it would be appropriate to schedule this in preference to other matters.

Mr. MEZVINSKY. I did not mean in preference, but since we have had that discussion as to a possible meeting on Monday, this could certainly be considered.

The CHAIRMAN. Well, perhaps after the gentleman from Wisconsin has discussed this further with the gentleman from Michigan, there may be some other opportunity, but I cannot at this time schedule a meeting for that purpose.

Mr. McCLODY. I move we adjourn.

The CHAIRMAN. The motion has been made to adjourn. The committee is adjourned. We will meet tomorrow morning in hearing at 10 o'clock. That is a closed hearing to hear Mr. St. Clair and questions will be asked only for purposes of clarification.

[Whereupon, at 7:35 p.m., the committee recessed to reconvene at 10 a.m., Thursday, June 27, 1974.]



# IMPEACHMENT INQUIRY

## Executive Session

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THURSDAY, JUNE 27, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY.

*Washington, D.C.*

The committee met, pursuant to notice, at 10:25 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Dear, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Bernard W. Nussbaum, senior associate special counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; R. L. Smith McKeithen, counsel; James B. F. Oliphant, counsel; George Rayborn, counsel; Hillary D. Rodham, counsel; Gary W. Sutton, counsel; William A. White, counsel; Fred G. Folsom, tax consultant; Robert McGraw, investigator; Jonathan Flint, research assistant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel; and Malcolm J. Howard, assistant special counsel.

The CHAIRMAN. The committee will come to order.

This morning we are pleased to welcome Mr. St. Clair. Though he has been in this room and maintaining strict silence in observance of the rules, nonetheless, I want him to know that he is welcome in these Chambers. He is welcome as a distinguished member of the bar and of course, as President's counsel.

Pursuant to the impeachment inquiry procedures that were adopted by the committee on May 2, 1974, after an initial presentation has been completed, the President's counsel would be invited to respond orally or in writing, as shall be determined by the committee. Mr. St. Clair is here this morning to present his response. Such response, as we know, shall be, in accordance with the resolution by Mr. Mann,



in the manner of the initial presentation before the committee in accordance with rule A, and may consist of information and evidentiary material, other than the testimony of witnesses, believed by the President's counsel to be pertinent to the inquiry. Counsel for the President shall be afforded an opportunity to supplement his written response with an oral presentation before the committee. Such presentation shall be in executive session.

In accordance with that resolution, Mr. St. Clair is here. I would like to state that Mr. St. Clair, I am sure, as a distinguished member of the bar, knows what the rules are, and we want him to know, too, that while we do have rules, nonetheless, in the interest of a fair inquiry, the Chair will, of course, interpret those rules in the best interest of the inquiry, as strictly as he possibly can but recognizing that there always has to be some liberal interpretation in order to make the response fair.

I think that in that spirit, the committee welcomes Mr. St. Clair.

I do want to state that Mr. St. Clair has indicated that while he has requested a time of 1 or 2 days to make this presentation, nonetheless, Mr. St. Clair expressed to me that he hoped he might be able to conclude his presentation, if it is at all possible, today. This is not restrictive. I do want Mr. St. Clair to know, however, that there may be interruptions. This is not, as he knows, any discourtesy to him, but we may have to go on to the Chambers in order to vote.

I further want to state that as Mr. Doar and Mr. Jenner were directed to present this material in accordance with the rules, Mr. St. Clair's presentation, I am sure, will be in the same manner, and I would hope and I would urge that in the interest of according Mr. St. Clair—I know everyone wants to—a fair opportunity to make his response uninterrupted, questions that may be directed to Mr. St. Clair will be only clarifying questions. I would urge that we consider that they be clarifying questions and not in any way delay these proceedings.

With that, Mr. St. Clair, I want to welcome you to this committee and in the best spirit of conducting this presentation, we await your presentation.

MR. HUTCHINSON. Mr. Chairman, if I might, I would like simply to join the chairman in welcoming Mr. St. Clair and assure him that we look forward with a great deal of interest and I am sure that his presentation will be helpful to the committee.

I would like to ask one preliminary question. I have one volume here. How many volumes do you have, Mr. St. Clair?

MR. ST. CLAIR. Four, Mr. Hutchinson.

MR. HUTCHINSON. Thank you.

MR. ST. CLAIR. Mr. Chairman?

THE CHAIRMAN. Mr. St. Clair.

MR. ST. CLAIR. Members of the committee, first, may I introduce, in addition to Mr. McCallill, who has been with me for these several weeks, my associate, Mr. Malcolm J. Howard, sitting at my right. Mr. Howard comes from Greenville, N.C., graduated from West Point, and is also a graduate of Wake Forest Law School. He came to the White House 3½ months ago as a staff assistant after having been assistant U.S. attorney in North Carolina. The chairman at my request has permitted Mr. Howard to be here and be of some assistance to me.

I would like preliminarily for the record to show, whatever may be said outside of this room, that I believe the President's counsel has been treated with the utmost courtesy and I appreciate it.

Second, I would like to note that the staff of the committee, the special staff, have made a comprehensive presentation of facts that from our point of view made our task both easier and more difficult. I have not sought to repeat any matters that they have already presented. There will be, I hope we will find, only minor instances of repetition where, in our judgment, it will be necessary for context purposes. But I have sought to avoid endless repetition of matters already before you, with the firm belief that this committee, in its deliberations, will look at all of the facts as a comprehensive whole and I perceive our role to be, as Mr. Doar and Mr. Jenner have perceived their role to be, at this stage at least, to supply essentially factual information to assist you in your deliberations. I have been informed that when this phase is over and oral testimony has been taken, in all likelihood, I think it would be useful for all concerned if briefs could be filed with the committee. But this is at this stage a fact presentation of those matters that have not specifically been called to your attention that in our judgment should be brought to your attention.

We have four volumes. The first and largest one deals essentially with the Watergate and the alleged coverup. Without any further ado, I would elect to proceed pretty much in the same way that Mr. Doar has proceeded, by asking Mr. McCahill to read the paragraph and I would like to comment from time to time with respect to backup material, if that meets with the chairman's approval.

The CHAIRMAN. Please proceed.

I would like to state to the committee that Mr. St. Clair did make that request for additional staff to sit with him and aid in the presentation. I consulted with the ranking Republican member and I know that the committee is pleased to accede to that request. Mr. St. Clair, please proceed.

Mr. ST. CLAIR. Tab 1.

Mr. McCAHILL. On Monday, June 19, 1972, 2 days after the break-in of the Democratic National Committee headquarters, Dean contacted Liddy and Liddy told Dean the men caught in the Democratic National Committee headquarters were Liddy's men and that Magruder had pushed him to do it. Dean asked Liddy if anyone from the White House was involved and Liddy told Dean no.

Mr. ST. CLAIR. In support of this paragraph, as is going to be quite often the fact, we rely on the sworn testimony of Mr. Dean before the Senate select committee. At page 933 of his testimony, right near the bottom, Mr. Dean confirms that he learned from Mr. Liddy that no one at the White House was involved in the break-in. Tab 2.

Mr. McCAHILL. John Dean testified that on June 18, 1972, 1 day after the break-in of the Democratic National Committee headquarters, "the coverup was already in effect, in being." Dean testified he was in on the coverup from the very beginning.

Dean concurred with Senator Gurney that the coverup "grew like Topsy, and Dean was a part of it." When questioned if he advised the President of what was going on, Dean responded that the first time he ever talked to the President was September 15, 1972, some 3 months later.

Mr. ST. CLAIR. It has always seemed important to counsel for the President that inquiry should be made as to the genesis of what Dean alleged was a coverup. I would call your attention to the testimony in response to Senator Gurney's questions on 1357, in which Mr. Dean agrees with the Senator that there was no policy set, it just sort of grew like Topsy. He confirmed that he had never talked with the President, at the very bottom of that. He said: "The first time I ever talked to the President was on September 15." Then he goes on to discuss an informal matter that did not involve any matter of substantive importance. It seems to me that this is a significant fact. Tab 3, please.

Mr. McCAHILL. Dean did not meet with the President until approximately 3 months after the Democratic National Committee headquarters break-in. The allegation that Dean informed the President of an illegal coverup on September 15, 1972, is based exclusively on the testimony of Dean. In testimony before the Senate select committee, Dean stated he was "certain after the September 15 meeting that the President was fully aware of the coverup."

However, in answering questions of Senator Baker, he modified this by agreeing that it was an inference of his.

Later, Dean admitted he had no personal knowledge that the President knew on September 15 about a coverup of Watergate.

Mr. ST. CLAIR. Again, Mr. Chairman and members of the committee, relying on Mr. Dean's testimony before the Senate select committee, this tab demonstrates the variation or modification in Mr. Dean's testimony from his original statement that he was certain the President knew about it, too, as the tab shows, it was then stated on page 1475, which is tab 3b, that:

It was an inference of mine, an impression I had as a result of the——

You already have before you, of course, your own transcript of that tape of September 15 that relates to this conversation. When it comes time for briefing, we will argue the matter. But I would call your attention to the variations describing this impression or inference that Mr. Dean says he drew from his talk with the President on September 15, the first time he ever talked with the President in any substantive manner. Tab 4.

Mr. McCAHILL. On May 22, 1973, the President stated that the bugging and burglary of the Democratic National Committee was a complete surprise and that he had no prior knowledge that persons associated with his campaign had planned such activities. On March 21, 1973, John Dean told the President that no one at the White House knew of the plans to break in the Democratic National Committee.

Mr. ST. CLAIR. This tab and several tabs that follow deal now with the evidence related to the President's knowledge with respect to the break-in and events that thereafter followed. This tab is a Presidential statement of May 22, 1973, and the reference to the transcript of the morning meeting of March 21, 1973.

May I say by way of explanation regarding these transcript references, and I do not think it poses an insuperable problem, but you will observe as you go through that we have relied on our transcripts. That is largely due to mechanical problems in coming within the time frame that we were operating and making ourselves available to the



committee's transcripts. It was not even clear in my mind that we would have that availability, but I must say that I did not raise the question with Mr. Doar. We felt it was important in this matter to proceed with such expedition as is possible. I do not believe that there would be any specific difficulty with locating in the committee's transcripts these particular portions. I may say that it has appeared in the newspapers from time to time that different people hear different things on these tapes. The tapes that had been furnished to you and to the special prosecutor have been transcribed by your staff. I must say I believe that that is a competent job. I may differ with respect to some of the words that they find that we do not find, and so forth, but that is your staff's product and you no doubt rely largely on that. And I do not find any difficulty with that.

I only point out to you that our pagination references here are to our own transcripts. But I think you will not have any difficulty in locating the pertinent portions in the committee transcripts. And I do not believe the substance of the conversation is different in any significant respect.

The CHAIRMAN. Mr. St. Clair, might I inquire if there is any suggestion at all in what you state that the transcripts that the committee has prepared would have less weight than the transcripts that are being presented by you now?

Mr. ST. CLAIR. No; I would say they would have at least the same weight. I think if a third person would hear it, we would have a third transcript. If I were a member of the committee, I think I would feel obligated to follow my own staff's transcripts unless someone were to point out to me that they were in error. And I find nothing of substantive difference between them. There are some areas, but I would say the committee transcripts are appropriate, valid transcripts. Sometimes I think they are more favorable to the President than our own. I may point out. That is why I am suggesting that you follow them.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. May I ask a question for clarification?

The transcript to which you are alluding, I assume, is the March 21 transcript—or is this September 15?

Mr. ST. CLAIR. No; this is the March 21, the morning.

Mr. WALDIE. And may I ask, the Chair will recall Mr. Owens' colloquy with the Chair relative to an amendment he was seeking at one time to have considered by the committee concerning discussion of edited transcripts to which the committee does not have a tape. It was my understanding that the committee was to rule that those transcripts would not be permitted to be argued by the person in whose possession the best evidence rests. Is that still the Chair's contention?

The CHAIRMAN. This is still the Chair's contention.

Mr. ST. CLAIR. Mr. Chairman, the tapes do not fall in that category.

Mr. McCLODY. May I ask the chairman this question: We relied on the transcripts we had received from the White House in our presentation, did we not?

Mr. DOAR. We only summarized the transcripts. We made no comment on them at all.

Mr. McCLODY. They were included in some of the tabs that we had for reference, were they not?

Mr. DOAR. We included them, yes.

Mr. McCLORY. Am I to understand that Mr. St. Clair can use the same evidence that committee counsel used?

The CHAIRMAN. Of course. There is no prohibition. There is no prohibition against presenting it.

Mr. WALDIE. Mr. Chairman, it is my understanding that your response to Mr. Owens and your response to me was that the best evidence was in the possession of Mr. St. Clair's client and that he ought not to be permitted to rely on less than the best evidence, whereas in our case, the best evidence we had was the edited transcripts.

The CHAIRMAN. That is correct. But the Chair did not, however, rule that the evidence that Mr. St. Clair would be presenting, which he would describe as such, could not be presented. I think it is up to the committee members to recognize what is the best evidence and what is secondary evidence.

Mr. WALDIE. I misunderstood. I thought the Chair's intention was to preclude counsel from utilizing evidence that is not best evidence when that evidence is in the possession of his client and the client denies access to it.

The CHAIRMAN. That was not the Chair's ruling. If it was understood as such, then I am sorry that I did not give you a clarification.

Mr. McCLORY. Mr. Chairman, may I ask another question for clarification?

Mr. OWENS. Mr. Chairman, may I say this first?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Chairman, the clear understanding that this member had was that if Mr. St. Clair offered evidence taken from primary evidence within his control, we would require that he provide us with that best evidence, with that primary evidence. Is that what the Chair is ruling against, at this point?

The CHAIRMAN. No; the Chair is not ruling against the request on the part of the committee for the best evidence. But I think that we have to understand, as a committee, that the best evidence, which is, I think, in the contemplation of the members the recorded conversations, is not in the possession of the committee, that it was refused to the committee or withheld from the committee, and the evidentiary presentation being made here is clearly described as not the best evidence. I do not think that we can foreclose Mr. St. Clair from presenting to us as the evidentiary material the same edited transcripts that have been released and have been described. I think it is a question for the committee members to have to decide that this is certainly, in the opinion of the Chair, not the best evidence available to the counsel, but it is the best evidence available to us at this time.

Mr. OWENS. Mr. Chairman?

Mr. McCLORY. Mr. Chairman, a question?

Mr. OWENS. If I may just complete that, Mr. McClory.

The suggestion of the Chair was, and it seems valid, that if Mr. St. Clair has evidence within his control, namely, a tape recording that he should not be allowed to submit to the committee transcripts which we have no chance to verify.

Mr. SARBANES. Will the gentleman yield?

On the particular evidence before us, we have this tape; do we not?

Mr. OWENS. That is right.

The CHAIRMAN. We have the tape of the 21st.

Mr. MARAZITI. Let us go ahead.

Mr. SARBANES. I think the question would be pertinent at the point when we are dealing with a transcript of which we do not have a tape, which is under the control of Mr. St. Clair and therefore in his power to provide the committee.

Mr. McCLORY. Mr. Chairman, a question of pure clarification. Are the pages that are referred to here, do they come from the large blue volume?

Mr. ST. CLAIR. Yes, sir.

Mr. SEIBERLING. Mr. Chairman, further clarification on this point.

I wonder if Mr. St. Clair, as he goes through this material and refers to the previously published transcripts, could indicate whether or not this is a section of a transcript that we also have the tape of or whether it is not? In that way, we can flag them.

Can that be done?

Mr. ST. CLAIR. Mr. Chairman, I will be glad to do that. Would the chairman entertain a response from me with respect to the admissibility of this matter at this time? Or would you care not to hear from me or hear from me at a later time?

The CHAIRMAN. I think we prefer to hear at a later time should it become appropriate.

Mr. McCLORY. Mr. Chairman, could I make a further suggestion? That is that we ignore this quorum call. Otherwise, we are going to be terribly upset. I think we should stay in session during quorum calls.

The CHAIRMAN. The Chair has no objection, but members, of course, can do as they please and the Chair cannot continue to sit with 10 members being present. We cannot continue to hear Mr. St. Clair.

[Recess.]

The CHAIRMAN. The committee will come to order.

Ms. HOLTZMAN. Mr. Chairman, I have a point of clarification.

I was a little confused about Mr. St. Clair's statement that we could basically rely on our own transcripts. As I understand the presentation, it is to give us a sense of additional evidence that we will be aware of. I think it would be helpful to me and I understand it would be for our own transcripts if Mr. St. Clair would point out where we cannot rely on them in all fairness. He has stated here that we can basically rely on those transcripts, and I think that would be helpful, at least for my understanding of the presentation.

Mr. ST. CLAIR. Mr. Chairman, during the course of Mr. Doar's presentation, we noted from time to time variations between our transcripts and his. There are very few. There is only one I can now think of, which I will call to the committee's attention, in which there could be something turn on the variation. In that event, my memory is that the committee's transcripts are probably more favorable to the President than our own transcript.

I will call that to the committee's attention when we get to it.

Ms. HOLTZMAN. If I could follow that up, what you are saying is that we could go back to our own transcript for purposes of what you have included here and rely on that basically with respect to your presentation.



Mr. ST. CLAIR. We find no substantive differences between the transcripts. You are, of course, entitled to rely on these or on any other transcripts you want. I just thought you might benefit from that.

Ms. HOLTZMAN. Thank you.

The CHAIRMAN. Please proceed.

Mr. ST. CLAIR. I think, Mr. Chairman, we were on tab 5.

Mr. McCABILL. H. R. Haldeman and John Ehrlichman testified before the Senate select committee that they did not believe the President had prior knowledge of the break-in plans. On March 21, 1973, John Ehrlichman told the President that no one in the White House had been involved, had notice, had knowledge, participated, nor aided or abetted in any way in the Democratic National Committee burglary.

Mr. ST. CLAIR. The tabs in support of this, Mr. Chairman, I believe are self-explanatory. They involve notice on the part of a number of people of early involvement and the transcript of the afternoon of March 21, 1973, which is a transcript of which you do have a copy. In this connection, the transcript reference is tab 5c and I think it is reflected, the paragraph reflected by Mr. McCabill is marked up on page 2883, I think it is. Tab 6.

Mr. McCABILL. John Mitchell testified before the Senate select committee that the President did not know of either the burglary plans or the coverup. Richard Moore testified before the Senate select committee that as a result of his meetings with the President and Dean on March 20, 1973, he concluded that the President had no knowledge that anyone in the White House was involved in the Watergate affair and John Dean told him as they departed that he had never told the President.

Mr. ST. CLAIR. These might have been included in the prior tab, but they now involve confirmation by Mr. Moore as to his own observations and his testimony as to what Mr. Dean told him on March 20, and Mr. Mitchell's as well.

Mr. DANIELSON. Mr. Chairman, point of clarification.

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. On tab 6b, page 1944 there, who is testifying?

Mr. ST. CLAIR. That is Mr. Moore, sir, a White House aide who testified at some length before the Senate select committee.

Mr. DANIELSON. Thank you.

Mr. ST. CLAIR. In connection with Mr. Moore's testimony, I would like to direct the committee's attention to page 1945, the top of that page. If I may impose upon the committee briefly to read a portion of it. This now relates to events of March 20, 1973, and it is Mr. Moore testifying, as I am informed. He says:

As we closed the door of the Oval Office and turned into the hall, I decided to raise the issue directly with Mr. Dean. I said that I had the feeling that the President had no knowledge of the things that were worrying Dean. I asked Dean whether he had ever told the President about them. Dean replied that he had not, and I asked whether anyone else had. Dean said he didn't think so. I said, and I use quotation marks to indicate the substance, and I think are almost my precise words—I said, "Then the President isn't being served, he is reaching a point where he is going to have to make critical decisions and he simply has to know all the facts. I think you should go in and tell him what you know, you will feel better, it will be right for him, and it will be good for the country."

That is the end of that quotation. This is the day before, of course, the meeting that Mr. Dean requested to have with the President on the morning of March 21. Tab 7.

Mr. McCaHILL. After the second meeting in Mitchell's office on February 4, 1972, the modified Liddy plan was turned down and Dean concluded the plan was at end. Dean later met with Haldeman and advised Haldeman that the White House should have nothing to do with any such activity. Haldeman agreed.

Mr. ST. CLAIR. This at first blush would seem to be out of chronological order, but as far as the subject matter as to the President's knowledge regarding the break-in and any alleged coverup, it seems to us to be appropriate to call to your attention at this point. The tab reference is to Mr. Dean's testimony before the Senate select committee, and at the top of page 931, he states, among other things, that he assumed that the Liddy plan was dead and that it would never be approved.

You may recall, in the special staff presentation, discussions of the Liddy plan involving the hierarchy of extremely weird suggestions involving all sorts of imaginations and I believe Mr. Dean testified there were two meetings on this, according to the staff presentation. This reference is to the period of time following the second turndown of the Liddy plan.

He goes on in this reference to describe how he thought it was dead, that he told Liddy he never wanted to talk to him about it and that as a result of this, he was unaware that Liddy was developing any such plan, "such plan" being that kind of plan which involved bugging, break-ins, use of prostitutes, all sorts of things. Here Mr. Dean is saying that he thinks that that matter was entirely dead. Tab 8.

Mr. RANGEL. Mr. Chairman, point of clarification.

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I wonder if our staff could assist Mr. St. Clair or if he has the facilities to reproduce these cover sheets, very much like our staff did for us, because I think most of us find it very helpful not to deal with the entire volume, but put them in cover sheets. I do not know whether you have that machinery, but I am certain it is available.

Mr. ST. CLAIR. I think we have that machinery. We will work out something, sir.

The CHAIRMAN. Thank you.

Mr. ST. CLAIR. Tab 8.

Mr. McCaHILL. Mr. Magruder reported to Strachan that a "sophisticated political intelligence gathering system" had been approved. Strachan included this item in a memo containing approximately 30 other items directed to Haldeman. Attached at tab H of this report were examples of the type information being developed and identified by the code name "Sedan Chair." Magruder and Reisner testified "Sedan Chair" involved a disgruntled campaign worker from the Humphrey Pennsylvania organization who passed information to the Committee To Re-Elect the President. Porter deemed this activity surreptitious but not illegal.

Mr. ST. CLAIR. The first matter under tab 8a that I would like to direct your attention to is the portion in small type on page 2441

of Mr. Strachan's testimony before the Senate committee. There he tried to set forth as close to verbatim—perhaps it is verbatim—no, he says it is almost a quote—a 3-line description of what Magruder had described to him as what had been approved for an intelligence-gathering system, with a budget, as he says, of 300. Later on he confirmed 300 to be \$300,000.

This is, as he says, almost a quote of the report he got from Magruder and what he, in turn, wrote in a memorandum to Mr. Haldeman. It was identified as political matters memorandum No. 18.

Then further down on that same page is a description of his understanding, at least, of Sedan Chair, which had been referred to as the type of material that was being produced and was attached as tab H on the political matters memorandum No. 18, which bore this 3-line description. The other pages further describe what the understanding was of the Sedan Chair type operation.

Tab 8b is the testimony of Mr. Magruder on the same subject matter. At the bottom of page 810 of his testimony, he describes what his understanding was at that time:

My concept was simply one of gathering as much information through sources in the opposition's committee would have been my concept at that time.

On page 848, Magruder indicates what his understanding of the sedan chair was at that time, as that of being a disgruntled employee of the Humphrey campaign.

Then on 8c, you have the same subject matter, the testimony of another individual who dealt with these matters as to his understanding of what the political intelligence gathering system constituted at that time.

Then 8d is the testimony of Mr. Porter regarding the same, and his conclusion, as he stated to Senator Weicker on page 670, was to the effect that while these were surreptitious, he did not—he deemed them to be surreptitious, he did not believe that they were illegal.

Now, on the next page, he continues on that same line, concluding—Senator Weicker asked, "But you did not think it was illegal?"

He said, "No sir." Tab 9.

Mr. SEIBERLING. Mr. Chairman, just a point of clarification.

Does it appear here what documents he is talking about, photographing reports and testimony?

Mr. ST. CLAIR. Mr. Chairman, they were described as intelligence reports annexed as tab H to political matters memorandum No. 18, which, as you may recall from the staff presentation, was one of several political memoranda that Mr. Strachan destroyed sometime shortly after the break-in. So we do not have available to us the document itself except as described herein. But it is this type of report that was annexed to political matters memorandum No. 18, which had been directed to Mr. Haldeman.

The CHAIRMAN. We will have to recess now. Mr. St. Clair. We have a vote on and we will return immediately following the vote.

Mr. ST. CLAIR. I understand.

[Recess.]

The CHAIRMAN. Mr. St. Clair.

Mr. ST. CLAIR. Mr. Chairman, tab 9, I believe.

The CHAIRMAN. Yes, that is correct, please proceed.



Mr. McCahill. Dean told the President on March 21, 1973, that Haldeman was assuming that the Committee to Reelect the President had an intelligence gathering operation conducted by Liddy that was proper. Dean told the President there was nothing illegal about "Sedan Chair."

Mr. St. Clair. This further deals, members of the committee, with the evidence concerning the state of the knowledge regarding the intelligence gathering operation insofar as White House personnel are concerned, and Dean confirming that Haldeman, or rather that Haldeman was assuming that whatever was going on was a legitimate operation. The old Liddy plans were thought to be dead.

And further on tab 9b is the President's confirmation of what he thought was going on that had to do with an employee, infiltration by a secretary, and it is at page 180 of the transcript of March 21. Tab 10.

Mr. Owens. Mr. Chairman, one clarification. It would be quite helpful if the staff, just to reassure us on each of these tabs that Mr. St. Clair offered, if they could reproduce comparable sheets from our transcripts, and would it be appropriate if they noted the differences? Would that be possible, Mr. Chairman, and supply them for insertion?

The Chairman. I think the staff will certainly take note of what has taken place, and that would help us.

Mr. St. Clair. Thank you.

Mr. Cohen. Mr. Chairman?

The Chairman. Mr. Cohen.

Mr. Cohen. I would just like to inquire about the presentation of Mr. St. Clair. Are you arguing from an advocacy point of view that makes a conclusion contrary to what the staff has done? In other words, I notice on tab 7 where you indicated the modified Liddy plan was rejected, and comparing that with our materials there is a difference of opinion that Mr. LaRue had suggested it was accepted. Are you going to continue to argue point by point from a conclusionary point of view?

Mr. St. Clair. Well, I hope that this has not been so. My presentation has been viewed overtly as an argument. Of course, it is. Let us be candid about it. I will argue in a brief, of course, that the evidence supports the proposition that I think is probably apparent from this presentation.

Mr. Cohen. Thank you very much.

Mr. St. Clair. Let us be clear about it, Sir. Mr. Chairman, I represent the President of the United States, and I am here in his behalf. I do not intend to present anything I do not believe is factual, but I do believe these materials should be brought to the attention of the committee.

The Chairman. Well, all you are doing, Mr. St. Clair, is to present material in support of the documents.

Mr. St. Clair. That is correct, Sir. Tab 10.

Mr. McCahill. Political Matters Memo No. 18 was prepared by Strachan and submitted to Haldeman on March 31, 1972. On April 4, 1972, Strachan prepared a talking paper including the mention of the "sophisticated intelligence gathering operation" for use by Haldeman in a meeting he was having with Mitchell on that day. The paper was returned to Strachan and filed with Memo No. 18 after Haldeman met with Mitchell.

Strachan testified the subject of intelligence gathering was never raised again by Haldeman. Strachan is quite certain none of the political matters memos had the "P" with a checkmark through the "P", which was the procedure used for memos discussed with the President.

Mr. ST. CLAIR. That material in support of this tab consists of testimony by Mr. Strachan. I think the pertinent part for our purposes is on page 2488 at tab 10a and if I may read the three lines. This is just below the center. "And I do not remember, and I am certain that I would, that any of my political matters memos were covered with the President in that form." Tab 11.

Mr. McCAHILL. Haldeman has testified that he and Mitchell did not discuss intelligence gathering activities with the President on April 24, 1972, and that he and Mitchell only reviewed with the President matters relating to the ITT-Kleindienst hearing, and arguments of regional campaign responsibilities.

Haldeman's notes of the meeting show no political intelligence gathering operations were discussed. The transcript of April 4, 1972, meeting between the President, Haldeman, and John Mitchell confirms that there were no discussions of campaign intelligence gathering activities.

Mr. ST. CLAIR. Now, Mr. Chairman, for the first time we have a transcript furnished to the committee through its staff for which the tape has not been delivered, but, of course, is available to the chairman and the ranking minority member.

It is my view as the counsel for the President that this material can appropriately be received by the committee, as similar materials have been on the presentation by the staff, and the weight to be attributed to this by the committee. I do not believe that the rules of evidence that might normally pertain in a court trial properly should be applicable here.

We have taken affidavits of individuals, newspaper materials and the like.

I, of course, believe that these materials are entitled to great weight, but that is for the committee to decide.

This transcript, so the record is clear, is one that was furnished. I forget when, not too long ago. June 5, I see, 1974.

Mr. MEZVINSKY. Mr. Chairman? Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

Mr. MEZVINSKY. Am I to assume that Mr. St. Clair has heard the tape itself to make that statement so that any transcript that is submitted of which a tape was requested by this committee and not received that, in fact, Mr. St. Clair, as counsel for the President, has in fact heard the actual tape itself?

The CHAIRMAN. I think we will recess at this time and give Mr. St. Clair an opportunity to respond when we get back. We had better go and come back after this rollcall vote, and see if we cannot go on possibly for a little while and then recess.

[Short break.]

The CHAIRMAN. The committee will come to order.

Mr. WALDIE. We are in the middle of a question.

The CHAIRMAN. The questioner is not here.

Mr. WALDIE. May I be recognized?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. We are now at the stage of the question we raised earlier when we were in a transcript, where, in fact, we have the original tape, and I would like to pose, if I may, to Mr. St. Clair through the Chair or directed to Mr. St. Clair, whatever the Chair prefers, a question on this particular subject.

Mr. St. Clair, is it your conviction that this transcript and that conversation is relevant to our case?

Mr. ST. CLAIR. Mr. Chairman, yes.

Mr. WALDIE. Is the original evidence of that transcript in the possession of your client?

Mr. ST. CLAIR. I believe it is, sir.

Mr. WALDIE. And is that original evidence available at this time for submission to this committee?

Mr. ST. CLAIR. It is my understanding—Mr. Chairman, is it your preference that I answer to you?

The CHAIRMAN. No, you go right ahead in the interest of expediting this.

Mr. ST. CLAIR. It is my understanding, Mr. Waldie, that the President has agreed to make this and any other transcripts, any tapes of other transcripts available to the chairman and the ranking minority member, as I think everyone is fully aware.

Mr. WALDIE. Well, that is a transcript that is also under a subpoena, is it not?

Mr. ST. CLAIR. This transcript of April 4?

Mr. WALDIE. That is under subpoena?

Mr. ST. CLAIR. Yes, it is, sir.

Mr. WALDIE. And that is a subpoena that the President has refused to answer, is it not?

Mr. ST. CLAIR. Well, he has answered it, but in all fairness he has refused to provide the committee a copy of the tape, except in the manner which he described.

Mr. WALDIE. And then just a final question if I may. It is your representation to the committee, is it not, that it is your client's intention not to produce that tape of this transcript?

Mr. ST. CLAIR. I have no reason to believe, sir, that he has reconsidered from his point of view.

Mr. WALDIE. Well then, Mr. Chairman, I renew my objection to that transcript, edited transcript, which is clearly not the best evidence. The best evidence is available to the parties that are seeking to produce less than the best evidence, and is being withheld not only with their intention, but contrary to an authorized subpoena from this committee. And to permit counsel to have his case and his conclusions, factual conclusions, dependent and resting on that evidence would seem to me not to be in the best interest of the truth that the client or counsel seeks so assiduously.

Mr. MEZYNSKY. Mr. Chairman, I have a question.

The CHAIRMAN. Well, without prolonging it, the Chair will have to state and rule that, as the gentleman knows, the committee is not operating under the strict rules of evidence. It has never been the intention of this committee to conduct a trial where we would have to comply with the strict rules of evidence.



And I believe that the representation that has been made to the effect that this is not the evidence that we have sought, which would have been the best evidence, and the committee members will have to consider this or otherwise have to foreclose Mr. St. Clair from presenting anything.

And I think under these circumstances, I believe that the committee members will just have to be aware and have to make their judgment based on the presentation that has been made by Mr. St. Clair that these are edited transcripts, which, in my judgment, are not the best evidence, and certainly in the judgment of the committee members will have to be evaluated as such. And as such I believe that we cannot just conclude that Mr. St. Clair cannot present this evidence.

MR. MEZVINSKY. Mr. Chairman, I have a question that I asked when we left and had to answer the vote. That is whether or not it is accurate to assume first of all that, in fact, counsel for the President has listened to the tape itself as to the conversation of April 4, 1972, and I would like an answer to that, because it could relate to this particular tab itself.

MR. ST. CLAIR. The answer, sir, is that I have not listened to the entire tape. If I may expound on that, Mr. Chairman, the preparation of this transcript and the other transcripts have been prepared by lawyers on my staff and on the staff of the White House counsel in a procedure which I approved, the manner and procedure which I have approved.

I have from time to time spot checked to see whether or not this procedure was, in fact, working, and I am satisfied that these are reasonably accurate transcripts.

MR. MEZVINSKY. Well, Mr. Chairman, I raise the point——

MR. ST. CLAIR. I am sorry, sir.

MR. MEZVINSKY. Excuse me.

MR. ST. CLAIR. I would like to add one further thing. I am not at all satisfied that if I had done personally all of the transcribing they would have been nearly as good as this. My experience is that I am a very poor reader of transcripts, and I think those who have had the onerous task of doing it know that it is quite an art. Thank you.

MR. MEZVINSKY. Well, the reason I raised this, Mr. Chairman, is that obviously there is going to come a time when this is going to be released. We see in this tab 11 it says the transcript, April 4, 1972, meeting with the President, Haldeman, confirms that there was no discussion of campaign intelligence gathering activities. Now, the counsel is representing this as a fact, as a given fact. If, in fact, he has not listened to the tape, how can we accept this as a given fact?

And I would raise the point on this as well as the question that if this is going to be released, it certainly would be a misleading representation.

MR. MCCLORY. Mr. Chairman, a point of order. This is not for clarification. The transcript confirms that. You are talking about the tape.

MR. MEZVINSKY. No, I think it is a clarification because it is, we have——

THE CHAIRMAN. The Chair will state that this is merely argument between members as to interpretation, and I believe that Mr. St.

Clair has merely represented here that this is a transcript, that it provides in the transcript, that particular transcript, and let us remember that this is not—and I probably misspoke when I said evidence—at this time Mr. St. Clair is, as I know it, is presenting detailed information, and I am going to view it as such, and whether it is the best evidence or secondary evidence I think is a judgment that the members are going to have to be aware of.

And this is pointed out, and I am sure it is a judgment that will be made on that basis, and I think if we proceed without going along in this way, that we will get done with this hearing.

Mr. SEIBERLING. Mr. Chairman, could I ask one further point of clarification?

Mr. MEZVINSKY. So no member from the President's counsel, I shall assume now, has listened to the tape itself, is that correct? So at least that is established for the record.

The CHAIRMAN. Well, I don't believe—

Mr. McCLORY. This is an argumentative statement. It is not clarification.

Mr. MEZVINSKY. I think it is a fact that is necessary for this committee.

Mr. SANDMAN. Regular order, Mr. Chairman.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, I just wanted to be sure I understood something that Mr. St. Clair said. Did I understand that the transcripts that were included in the blue book were prepared by lawyers on the White House staff or on the staff of the legal counsel? And then I understood in a manner according to a procedure approved by you, is that correct?

Mr. ST. CLAIR. Yes. But if I may, Mr. Chairman, of course, typists were involved, and so forth. We are talking about the intelligence in the transcripts.

Mr. SARBANES. Yes.

Mr. ST. CLAIR. Lawyers are very poor typists, but it is quite a complicated procedure, but it is a procedure that I am satisfied is productive of substantively correct transcripts. All transcripts are subject to hearing variations, as we all know. My view and experience has been that substantively, however, the message is substantially the same, given a good faith effort to transcribe what you hear on a tape. And tapes vary as to their audibility, and so forth.

Mr. RANGEL. Mr. Chairman?

Ms. HOLTZMAN. Mr. Chairman?

Mr. RANGEL. Point of clarification.

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Respecting the Chair's ruling on the quality of the evidence on tab 11, if there was some way to identify what transcript we are talking about, I think again it would help us in reviewing. The fourth line from the bottom just describes the transcript of April 4, and in the footnote indicates that it was the transcript submitted to the Committee on the Judiciary.

I assume that this is the same transcript which we refer to as the edited transcript or the blue book transcript, is that correct?

Mr. ST. CLAIR. Mr. Chairman, no. This was submitted on June 5. Perhaps if I may, you may recall we had some discussion about this particular transcript, and briefs were filed as to whether or not it would be appropriate for a subpoena to issue and so forth.

Mr. Haldeman's contemporaneous notes indicated that there was ITT discussion, but nothing about intelligence gathering plans, as you may recall. This transcript was submitted, it is not in the blue book. It was submitted some time thereafter.

Mr. SEIBERLING. Mr. Chairman?

Mr. RANGEL. I see. But the footnote then would describe, as this footnote would indicate, that it is not in the public domain but one that has been submitted to the Judiciary Committee without a tape, and we would be able to identify the documents by your footnote then?

Mr. ST. CLAIR. Yes, sir.

Mr. RANGEL. Thank you.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Are we to understand that all of the blue book transcripts were edited, were prepared under procedures and in a manner approved by Mr. St. Clair and not as this particular transcript?

Mr. ST. CLAIR. If I may?

The CHAIRMAN. Mr. St. Clair.

Mr. ST. CLAIR. I assumed the duties of special counsel as of the 2d day of January of this year. Prior to that time a limited number of transcripts had been prepared for submission to Judge Sirica, and ultimately to the grand jury. Those are the so-called subpoenaed transcripts. Those are the transcripts that were furnished to this committee by the President in his undertaking to give this committee everything that was given to the grand jury. Those were prepared prior to my time.

But, upon my inquiry I found they were prepared in substantially the same manner as transcripts that were later prepared, which were not furnished to the grand jury and which comprised the bulk of the so-called blue book, were prepared after I got here.

For example, the morning of March 21 is a so-called subpoenaed transcript. The committee has a copy of that tape, one that they made from our copy, and then they also made a copy I think from the judge's original, so that on March 21 you have the tape itself. That transcript was prepared and furnished to the judge and to the grand jury before I got here, but essentially, upon inquiry I found it was prepared in substantially the same manner.

Now, a large number of the transcripts in the blue book, particularly relating to the period following March 21, 1973, were prepared after I got here in the manner in which I have suggested I felt was appropriate, and these were not furnished to the grand jury, nor was a tape made available under circumstances that we are all aware of.

Mr. SARBANES. Would the gentleman yield?

Mr. SEIBERLING. Yes, I yield.

Mr. SARBANES. I would just like to clarify that further. I take it that that means with respect to transcripts prepared before you arrived on January 2, which dealt with the subpoenaed matters, tapes for those transcripts would have been provided to the court then subsequently to this committee?



Mr. ST. CLAIR. Were, in fact, provided to this committee.

Mr. SARBANES. So that for transcripts prepared before you arrived, we do have the tape for those, is that correct?

Mr. ST. CLAIR. That is correct. That is why I did not feel it incumbent upon me to redo the whole thing again, because you were going to have the tapes and you could prepare them. And, in fact, as I suggested I think to Ms. Holtzman, I am satisfied that your transcripts are as good as ours in that respect.

Mr. SARBANES. Thank you.

The CHAIRMAN. Mr. St. Clair, would you proceed?

Mr. ST. CLAIR. Thank you.

Ms. HOLTZMAN. Mr. Chairman, I just have a question on the procedure at this point. I understand that you have ruled against objections raised by Mr. Waldie and Mr. Mezvinsky. Will we have a later opportunity to object to the inclusion of these edited transcripts in the record that is finally presented, because I personally object and am dismayed that the best evidence was not presented to this committee for its fairest judgment?

The CHAIRMAN. I think the objection has already been made. The question, of course, is not something that we are going to have an opportunity to do anything about other than to consider it as the kind of information that has been presented to the committee. And we are operating under the rules of procedure that this committee and the Congress has laid down, and as such, I think that we had better recognize that this is the way this presentation is being made.

Ms. HOLTZMAN. I thank the chairman.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. The gentleman has already stated his objections, and has already—unless we get through with this, we are going to be here all night, and I am going to advise the members again that I think that the members had better consider when they ask these questions, and the Chair does not want to continually assert his position as the chairman, but the Chair is not going to recognize members any more except if it is going to be clarifying. And then I am going to state that if you insist that I am not going to recognize anyone until Mr. St. Clair makes his presentation.

Mr. ST. CLAIR. Tab 12.

Mr. McCAHILL. The President had no knowledge of an attempt by the White House to cover up involvement in the Watergate affair. Dean told the President that there were things Dean knew the President had no knowledge of.

Mr. ST. CLAIR. The tab in support of this is one of the so-called subpoenaed tapes which you have a tape of. The portion that I would call your attention to is set forth on page 202 of the blue book.

Mr. Dean says: "I know, sir. I can tell from our conversation that these are things that you have no knowledge of."

And the President confirms by saying: "You certainly can! Bugging, et cetera." And you can read it.

This is part of the morning conversation of March 21. Tab 13.

Mr. SEIBERLING. Mr. Chairman? Mr. Chairman, I think the first sentence of this statement is an ultimate conclusion that is for this committee to decide and it is not a presentation of evidence. The second

sentence is the evidentiary statement, and I would suggest respectfully that first sentence ought to be taken out of there.

Mr. ST. CLAIR. I think it is an overstatement, and it probably should be amended to read there is no evidence of what the President had knowledge.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. I hesitate to intervene in view of the rule, but I think this may be essential, especially since Mr. St. Clair now wants to abridge his own document here. And it seems to me the key issue is this: when Dean talks about these things I do not think that we have any evidence that that is the entire alleged involvement of the White House. But, I think that the first sentence goes beyond that, and I am not certain that even Mr. St. Clair's modified statement is supported by the evidence offered here.

Mr. BUTLER. Mr. Chairman, can we not wait until we finish the presentation and then go back and have these sort of criticisms, and if there are any deletions or amendments at that time it would be an appropriate time to take them up?

Mr. SEIBERLING. During Mr. Doar's presentation people did not hesitate to point out the things that they felt were deficient.

The CHAIRMAN. The Chair will resolve these questions, and I think Mr. St. Clair has been advised to proceed. And any member who wants to address the Chair, please address the Chair, and we will decide whether or not we will put the question to Mr. St. Clair.

Mr. SEIBERLING. Well, Mr. Chairman, may I address the Chair? Can we get a——

The CHAIRMAN. Mr. St. Clair has already stated——

Mr. SEIBERLING. Well, but I do not think that his proposed change actually changes that sentence in substance.

The CHAIRMAN. Well, I believe that is a question that the member will have to resolve, and I think we can dispute this all day long. Let's wait until the presentation is made.

Mr. SEIBERLING. Well, it has been made on this point.

Mr. RAILSBACK. Regular order.

Ms. HOLTZMAN. I would like to ask a clarifying question. Mr. Chairman, is there a date that paragraph 12 refers to, or is this a statement for a certain period of time?

Mr. ST. CLAIR. Mr. Chairman, the date is March 21, 1973.

Ms. HOLTZMAN. I thank you.

The CHAIRMAN. Please proceed.

Mr. ST. CLAIR. Tab 13.

Mr. McCaHILL. The testimony of Gray before the Senate select committee establishes that the origin of the theory of the Central Intelligence Agency's involvement in the break-in of the DNC was in the FBI, and that Gray communicated the theory to Dean on June 22, 1972.

Dean confirmed that Gray informed him on June 22, 1972, that one of the FBI theories of the case was that it was a CIA operation, and Dean testified that he reported this to Haldeman and Ehrlichman on June 23.

Mr. WALDIE. Mr. Chairman, may I address the Chair? I know the Chair wants to conclude this, but I would like to use this tab as an indication of what will be the ruling of the Chair in the future. There is an absolute conclusion of law. "The testimony of Gray establishes that the origin of the theory was in the FBI."

I have the testimony of Gray from the Senate select committee, and it simply does not establish that at all.

Now, when we ran into similar situations with Mr. Doar's presentation, the minority side, quite properly, insisted those conclusions were unwarranted and misleading. Now, I would think that when there is one as misleading as this, and I call your attention to pages 3518 and 3519 of the Senate select committee testimony, the colloquy between Senator Baker and Mr. Gray, and it is just precisely to the contrary, as set forth in here.

Now, I thought we prohibited conclusions of law being set forth in the statement of fact. Now, if he wants to say there is evidence from Gray in the Senate select committee file, et cetera, that would be permissible. But, this seems to me to distort the record, and if this sort of conclusion will be replete through this presentation, the record as a written transcript that history will be resolving as to what people on the committee felt about the presentation in comparing it to Mr. Doar's presentation.

I will abide solely by the Chair, but we are in an uncomfortable situation here. Mr. Doar was instructed to be absolutely level and even in his presentation, and down to the monotony of his own voice.

Mr. SANDMAN. Can I respond to this? We can keep this up all day.

The CHAIRMAN. The Chair will respond to that.

The Chair believes that unless Mr. St. Clair is able to support this with the testimony of Gray as he states, before the Senate select committee, then I do not believe the tab appropriately really reflects what the supporting testimony is supposed to reflect. I think that the gentleman from California is absolutely correct in this instance. This is a different situation from the question of evidence and the question of drawing a conclusion.

Mr. SANDMAN. Mr. Chairman, may I answer the gentleman from California in one respect that I think needs clearing up?

The position of Mr. Doar is entirely different from the position of Mr. St. Clair. Mr. Doar is presenting information by way of an inquiry for us to decide. Mr. St. Clair, on the other hand, is representing a client, the President of the United States.

Mr. WALDIE. That is not the case at this stage of the presentation.

Mr. SANDMAN. And he has a right to present those things that he feels are in the benefit of his client's case. I cannot see anything wrong with that.

Secondly, why do we not stop being hypocritical about what is the best evidence? You fellows on that side yesterday determined that the best evidence cannot be presented because you limited the number of witnesses.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. I think that there is no rhyme or reason for continuing the argument. I actually believe, Mr. St. Clair, that that tab



that Mr. Waldie has referred to, unless it reflects the language just as it is in there—and I do not believe that it does—in my judgment, it is not just information being presented as such, but is a conclusion on the part of counsel.

Mr. DENNIS. Well, Mr. Chairman.

Mr. McCLODY. May I inquire?

Whose testimony is that that is referred to?

Mr. ST. CLAIR. Pat Gray's.

Mr. McCLODY. No, that is not Mr. Gray's testimony. I think the fault lies in the fact that somebody is testifying as to what Mr. Gray testified to. I think it is proper that you should say that so and so testified or gave a statement that Mr. Gray testified.

Mr. DENNIS. Will the gentleman yield?

Mr. McCLODY. May he answer my question?

The CHAIRMAN. Let Mr. St. Clair respond.

Mr. ST. CLAIR. The very first thing I say is the testimony of Gray. Then the testimony of Gray is what is referred to in 13a. He says, "At this meeting with Dean, I discussed with him our very early theories of the case; namely, that the episode was either a CIA covert operation," et cetera.

Mr. McCLODY. And looking at page 943 of tab 13b, it says, "It was during my meeting with Mr. Gray at that time, Mr. Gray had the following theory."

Mr. ST. CLAIR. I gave you both Mr. Gray's testimony, which is 13a, and then Mr. Dean's, which is 13b.

Mr. McCLODY. That is different.

Mr. WALDIE. If the Chair would prefer, I will read into the record the testimony that I am talking about, that I referred to.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. This is on page 3518, Senate select committee:

Senator BAKER. At this point, June 23, 1972, had anyone from the White House or outside the FBI tried to suggest to you that there was CIA involvement?

Mr. GRAY. Prior to this meeting on June 23?

Senator BAKER. Yes.

Mr. GRAY. Yes, sir. Mr. Dean had, either in that meeting of June 22 or in the telephone call on the morning of June 23, and I said to him, if there is CIA involvement, let the CIA tell us.

Senator BAKER. So Mr. Dean and General Walters were suggesting to you that there was CIA involvement. Director Helms had already told you there was not CIA involvement.

Mr. GRAY. That is right, sir.

Mr. KASTENMEIER. Mr. Chairman, on the point raised by the gentleman from California, Mr. Waldie, this one tab and the point he raised, the presentation before us might turn on this question. It would seem to me that a decision has to be made whether this presentation is parallel with that of our own staff. I differ with Mr. Waldie in that respect. I do not think it is supposed to be. It may be well for us to analyze the presentation subsequently as best we can by staff or otherwise as to whether the statements of information are in fact confirmed by the presentation or by other evidence. But we are not in a position, it seems to me, to debate each tab as we come to it. We neither have the time nor the research capability at that instant. I believe, Mr. Chairman, we will have to accept the presentation of

Mr. St. Clair as it appears, and subsequently determine whether it in fact justifies the conclusions it advances. I do not think that we can debate each tab as we come to it.

So I expect that the Chair's earlier policy of permitting questions for the purpose of clarification alone should be adhered to and that we not at this point debate and argue the presentation of Mr. St. Clair.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. I think that is appropriate, and the Chair will proceed in that manner.

I do want to point out, Mr. St. Clair, though, before we leave this and go on to that, that I think the problem here is that you are talking about the establishment in conclusion of the origin, and the question that I think is discussed in the supporting documents merely talks about a discussion of theories. I would think that while I, myself, would review what you have to say and then consider it, I think, however, that you have to be careful about stating whether or not you are drawing a conclusion or whether or not you are actually reflecting what is stated in there. I do believe that there is not an accurate reflection of the statement in the supporting evidence except that theories were discussed and not established.

Mr. SEIBERLING. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I think we had better proceed. Mr. St. Clair.

Mr. SEIBERLING. Mr. Chairman, is it in order to raise a point of order?

The CHAIRMAN. No, it is not in order, and we will proceed. Mr. St. Clair.

Mr. ST. CLAIR. Tab 14.

Mr. McCahill. Haldeman's testimony before the Senate select committee confirms that Dean reported to him the FBI's concern about CIA involvement, and that Haldeman in turn reported this to the President, who ordered Haldeman and Ehrlichman to meet with the CIA officials to insure that the FBI investigation not expose any unrelated covert operation of the CIA. The uncertainty regarding the possibility of uncovering CIA activities was recognized in a memo dated June 28, 1972, from Helms to Walters.

Mr. ST. CLAIR. The tabs here refer to the Senate select committee testimony of Mr. Haldeman, which is tab 1a, to the effect as stated in the paragraph.

Tab b is a copy of a memorandum which is already before the committee in the special staff presentation and to that extent is duplicative of their work, but I felt that in the context it would be appropriate to put it here. I would call the committee's attention to the last sentence of Mr. Helms' memorandum of June 28, 1972. I will read it. It is very short:

In addition, we still adhere to the request that they confine themselves to the personalities already arrested or directly under suspicion and that they desist from expanding this investigation into other areas which may well, eventually, run afoul of our operations.

I think it is a fair statement to suggest that "they" referred to is the FBI. Tab 15.

Mr. SEIBERLING. Mr. Chairman, where is that language? I do not have it in my copy.

Mr. SMITH. Tab 14b.

Mr. SEIBERLING. I am looking at 14b. I do not find any such language.

Mr. ST. CLAIR. I hope that 14b in your book, sir, is a memorandum on the subject of the Watergate Affair from the Deputy Director, June 28, 1972.

Mr. SEIBERLING. But the last sentence says "This brings you up to date, et cetera."

Mr. ST. CLAIR. I am sorry, it is the last sentence of paragraph 2.

Mr. SEIBERLING. Mr. Chairman, I would like to make the same point of order about tab 14. It says that Haldeman's testimony before the SSC confirms. This is a conclusion and it seems to me that it violates the rules that we agreed to earlier this week with respect to Mr. St. Clair's presentation, that that presentation would be limited to factual statements and not to argument. If the tab said Haldeman testified before the Senate select committee that Dean reported so and so, that would be a statement of fact. But when you put it in conclusionary language, it seems to me it becomes argumentative. That same is true of the two preceding tabs and therefore is in violation of the understanding on which we adopted the rules. I would like to make a point of order that it is out of order, as well as the two preceding tabs.

The CHAIRMAN. Is the gentleman raising a point of order to the presentation?

Mr. SEIBERLING. Yes, Mr. Chairman: that is exactly what I am doing. I am raising the point of order that tabs 12, 13, and 14 contain argument and not just statements of fact.

The CHAIRMAN. Will the gentleman reserve his point of order until we have concluded the entire presentation and note those points of order?

Mr. SEIBERLING. Yes, Mr. Chairman.

The CHAIRMAN. Note those points of order and the chairman will recognize him for that purpose. Mr. St. Clair.

Mr. ST. CLAIR. Tab 15.

Mr. McCahill. The President stated on May 22, 1973, that it did seem possible to him that, because of the involvement of former CIA personnel, the investigation could lead to the uncovering of covert CIA operations totally unrelated to the Watergate break-in. The President stated he was also concerned that the Watergate investigation might lead to an inquiry into the activities of the special investigations unit.

Gray testified that on July 6, 1972, the President told him to continue to conduct his aggressive and thorough investigation of the Watergate affair.

Mr. ST. CLAIR. The tabs, I think, in support of this are self-explanatory and they deal principally with selections from the President's public statements of May 22, 1973, in tab a.

In tab b is Mr. Pat Gray's testimony with respect to a conversation that he had with the President raising the question with the President about the possible confusion out of the FBI and CIA relationship. That appears at tab b on page 3462, in which the President said, "Pat, you just continue to conduct your thorough and aggressive investigation." Tab 16.



Mr. McCAHILL. The President was unaware that Gray had destroyed documents found in Hunt's safe until told by Henry Petersen on April 17, 1973.

Mr. ST. CLAIR. The material in support of this is a portion of what had been described as the White House edited transcripts. This would be a transcript, I believe, a tape of which has not been made available to the committee, certainly as to 16a, 16b—I would have to check that. It may well be that this transcript of April 16 was furnished to the committee. I would have to check that during the noon recess. Tab 17.

Mr. McCAHILL. Dean did not disclose until November 2, 1973, while being questioned by attorneys of the Special Prosecutor's Office that he had personally destroyed documents from Hunt's safe.

Mr. ST. CLAIR. The tab in support of this is grand jury testimony—no, I take it back. It is a statement made in open court by Ben-Veniste of the Special Prosecutor's staff reciting Mr. Dean's disclosure that he had in fact shredded two notebooks that had been taken from Mr. Hunt's safe as well as destroying or disposing of a pop-up notebook and an address book.

Mr. RANGEL. Mr. Chairman, a point of clarification.

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Is it my understanding that in order to protect our rights, it is automatic that members of this committee are reserving their right to object so that we do not have to continuously do it?

The CHAIRMAN. That is correct.

Mr. RANGEL. Very good. Thank you.

Mr. ST. CLAIR. Tab 18.

Mr. McCAHILL. The President was unaware prior to March 21, 1973, that Magruder and Porter perjured themselves to a grand jury. On April 17, 1973, the President advised Ehrlichman and Haldeman against perjury.

Mr. ST. CLAIR. The transcript references here are to White House edited transcripts, the tapes of which have not been made available to the committee.

I am sorry, I am informed that the first one of March 21 has of course—that is the morning of March 21. It is the second one, 18b, that has not been. I think in the interest of expedition, the material submitted is probably self-explanatory.

On page 183 of tab 18a, the President is interrogating Dean about whether Magruder knew anything about the break-in and Dean confirms that he did. In fact, Dean said, "Magruder gave the instructions to be back in the DNC," which I take it means to go back in the DNC.

The President says, "He did?"

The President says, "You know that" and so forth.

Tab 18b, at the bottom of page 1022, the transcript discloses instruction to the effect that the President hoped that Strachan had been told, "Believe me, don't try to hedge anything before the damned grand jury. I am not talking about morality, but I am talking about the vulnerabilities."

Mr. Ehrlichman responds, "Sure, good advice." Tab 19.

Mr. McCAHILL. John Dean advised the President on March 21, 1973, of Hunt's demand for approximately \$120,000 for legal fees and family

support. The President explored the option of meeting Hunt's demands so as to secure the time needed to consider alternative courses. The President was not concerned with the possible Watergate related disclosures, but rather which disclosure of the national security matters Hunt had been involved in as a member of the Plumbers.

The President advised Dean that the money could not be paid because it would look like a coverup.

At another point in the conversations, the President requested advice as to whether or not the money should be paid. Later, the President concludes that Hunt will blow the whistle no matter what is done for him.

Mr. ST. CLAIR. The tabs in support of this all relate to the morning meeting of March 21. I am reasonably certain that most of the members either have or will have carefully examined the transcript of this meeting and I think that these selections we have made are made for the purpose of calling your attention to them. The one I would like to direct your attention to first is tab a, 19a, and it is on page 224 of our transcript, about the middle of the page.

The President states: "If, for example, you say look we are not going to continue to—let's say, frankly, on the assumption that if we continue to cut our losses, we are not going to win. But in the end, we are going to be bled to death. And in the end, it is all going to come out anyway. Then you get the worst of both worlds. We are going to lose and people are going to"—and Mr. Haldeman, who at this point was in attendance, interjects, "And look like dopes."

And in effect, the President says, "Look like a coverup. So that we can't do"—then he goes on to discuss another possible alternative.

The rest of these items that have been marked I think are reasonably self-explanatory. In the interest of saving time of the committee, we will analyze these in detail in our brief. I think that the arguments over this conversation would be analysis. Unless the committee thinks otherwise, I will be glad to submit them here and comment on them at a later time. Tab 20.

Mr. McCAHILL. At the March 21, 1973, meeting the President, after considering several options, seized on the possibility of calling a new grand jury, thereby delaying Hunt's sentencing and making the immediate payment unnecessary as a means of buying time. Not once after this option was explored was there any suggestion that Hunt's demand be met.

The concluding page of the transcript of the March 21, 1973, morning meeting clearly demonstrates that the President recognizes that any blackmail and coverup activities then in progress could not continue.

Mr. ST. CLAIR. Again we have cited in support of that selections of the tape of March 21 in the morning. Tab 21.

Mr. McCAHILL. Neither of the participants of the March 21, 1973, morning meeting came away with any opinion that the President authorized payments to Hunt. Haldeman concluded that the President rejected payment to Hunt. Dean testified: "The money matter was left very much hanging at the meeting. Nothing was resolved."

Mr. ST. CLAIR. I would like to call your attention specifically to tab 21b, which is Mr. Dean's testimony before the Senate select committee.

On page 1423, in just about the middle, there is a long paragraph of Mr. Dean's statement, in which he makes reference to a discussion which he then identified as having taken place on March 13 about the money demands that were being made.

Now, I think I would suggest, or whatever word would be appropriate, that it is quite clear Mr. Dean was mistaken as to the date. The conversation he was talking about at which money demands were discussed was actually March 21 and your examination of your own transcripts of both March 13 and March 21, I am sure, would confirm that and I doubt if Mr. Dean would deny it.

But I do want to emphasize that the very last thing he says regarding the conversation at which money demands were discussed. He says in the last sentence, "And the money matter was left very much hanging at that meeting. Nothing was resolved." Tab 22.

Mr. SEIBERLING. Mr. Chairman, the transcript that is attached as tab 21a is not the one described under the tab. At least not in my book. According to tab 21, 21a is a transcription to April 17, and yet that tab that I have is a conversation between Mr. Haldeman and the President about what he said on March 21, as I read it.

Mr. ST. CLAIR. May I respond, Mr. Chairman?

The CHAIRMAN. Mr. St. Clair.

Mr. ST. CLAIR. I believe that the April 17 reference, which is tab 21a, reflects the conversation between the President and Mr. Haldeman on April 17 as to their memory of what transpired on March 21. It is a recall of earlier events.

Mr. SEIBERLING. All right, thank you.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. On tab 21b, it appears on p. 1423 to be discussing the March 20 meeting. Is there any explanation of that?

Mr. ST. CLAIR. I would say March 13.

Mr. OWENS. The highlighted testimony appears to be discussing the meeting of March 20.

Mr. ST. CLAIR. If I may, he initially is talking about March 20. Then he changes the focus of his testimony in that long paragraph in the center of the page to March 13, at a meeting in which these money demands were discussed. He talks about a million dollars, there is no problem, and so forth and so on. That clearly makes reference to what in fact took place on March 21.

Mr. FLOWER. Mr. Chairman, point of clarification.

I do not think there are any discrepancies there. Mr. Dean and the President had a telephone conversation on the evening of March 20, which at the top of that page, it indicates. Then the meeting transpired the next day.

The CHAIRMAN. That is correct.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback?

Mr. RAILSBACK. Mr. St. Clair, you referred to the March 13 date on that page. Am I correct that there is some evidence or belief, anyway, that that reference to March 13 should have been to the March 21 meeting?



Mr. ST. CLAIR. That is what I tried to point out, and I do not think that is seriously in dispute. When Mr. Dean gets here, I trust he will confirm that. Tab 22.

Mr. McCABILL. At the March 21, 1973, morning meeting, while discussing the practicality of getting another grand jury, the President told Dean and Haldeman to get Mitchell to come to Washington so that Mitchell could meet with Haldeman, Ehrlichman, and Dean.

Mr. ST. CLAIR. The tab in support of this is part of the morning meeting of March 21 and on the top of page 248 of our transcript is a discussion of getting Mitchell to get down, whether he could get down that afternoon, and it was decided if maybe he could get there the next day, that would be all right. Tab 23.

Mr. McCABILL. Haldeman and Dean left the meeting with the President at approximately 11:55 a.m. on March 21, 1973, pursuant to the President's request. Haldeman called Mitchell at approximately 12:30 p.m. and requested Mitchell come to Washington. Dean's testimony confirms this.

Mr. ST. CLAIR. The telephone log of Mr. Haldeman is in tab a, showing a call to Mr. Mitchell at 12:30.

Tab b is Mr. Haldeman's testimony regarding his talk with Mr. Mitchell. This has been presented to you by your staff in its presentation and I have repeated it here for purposes of putting the matter in context.

You may recall that in substance, several questions were asked of Mr. Haldeman regarding whether or not he did not relay instructions to Mr. Mitchell to pay Hunt's legal fees and Mr. Haldeman declined to confirm that that was the fact.

Finally, on tab c on page 1000 of Mr. Dean's testimony, he stated, "Accordingly, Haldeman, as I recall, called Mitchell and asked him to come down the next day for a meeting with the President on the Watergate matter." Tab 24.

Mr. McCABILL. On March 21, 1973, Dean had a telephone conversation with LaRue concerning Hunt's request for money and Dean suggested LaRue call Mitchell. LaRue called Mitchell in the early afternoon of March 21, 1973, and advised Mitchell that he had a request for \$75,000 for Hunt's legal fees. Mitchell acknowledges that he advised LaRue to pay the money for attorney fees. During the March 21, 1973, late afternoon meeting with the President, Dean denied that he had spoken to either LaRue or Mitchell, when in fact, he had spoken to both.

Mr. ST. CLAIR. The tab, some of these tabs, are repetitive. Mr. Dean's Watergate grand jury testimony in tab 24a was presented by the special staff, and it confirms that he called Mr. LaRue sometime on the 21st. It would be important, if I may make the observation, it seems to me, for the committee to find out when on March 21 Mr. Dean made this call. The grand jury testimony seems to be silent as to whether or not it was in the morning or early afternoon.

This is something that I think should be elicited from Mr. Dean.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, I have been perplexed for weeks as to the precise timing of these telephone calls. In your tab, you at least state

certain information that they were made in the early afternoon, and apparently, prior to the afternoon meeting in the Oval Office. Can you point to the material in back of that statement which specifically supports that?

Mr. ST. CLAIR. I hope so.

May I beg your indulgence for a moment?

I think, sir, unless I can find an express reference to that, it would be the result of an analysis of the events, which included a call by Mr. LaRue—first a call to Mr. LaRue from Mr. Dean; then a call by Mr. LaRue to Mr. Mitchell; then a call to Mr. Bittman at his office to be sure Mr. Bittman was going to be home that night.

Wait a minute. My learned friend, Mr. Howard, says he has found it.

I do not think he has.

I think that the record would support only in the afternoon. But the events that took place would make it quite clear that that would have had to take place in the early afternoon, in my view.

However, this is again something that should be derived from Mr. LaRue's testimony.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Could we have that clarified further? I tried to follow how you sort of got to that assumption and it really was not clear to me how you got to the point that you could say LaRue's call was in the early afternoon.

Mr. ST. CLAIR. First of all, we know it was in the afternoon.

Mr. SARBANES. Where do you note that?

Mr. ST. CLAIR. Page 7 of tab 24b. He says, "I would place it in the afternoon."

Mr. SARBANES. Which call was that?

Mr. ST. CLAIR. That was the call to Mr. Bittman's office to be sure he was going to be home that night.

Then it says, "I would place that call in the afternoon."

Then the question was:

Now, prior to making that call. I take it you had had discussions with other people concerning whether to make this delivery.

A. That is correct.

That day you had spoken to Mr. Dean and Mr. Mitchell.

A. That is correct.

So before calling Bittman, he had already talked with Dean and with Mitchell.

Do you follow me?

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I would like to ask Mr. St. Clair, with regard to 24a, the testimony of Mr. LaRue, and in some of the previous supporting documents, I find portions of them underlined in addition to the bracketed indications in the margins. Who has made these underlines and what is the explanation for that? What are they supposed to indicate?

Mr. ST. CLAIR. The underlinings, sir, should be disregarded. Our only copy of this material was underlined for our own emphasis purposes and should be disregarded by the committee.

Mr. MAYNE. I would hope that in any future matters presented to us, you get additional copies so that those underlines would not appear.

Mr. ST. CLAIR. I will be glad to do so. I was a little sensitive about making additional copies of grand jury testimonies, because my experience is the more copies you have, the greater vulnerability you have to having it appear in the public press. So we made, other than what is involved here at this time, only these copies.

Mr. MAYNE. As I recall, the copies of grand jury testimony which our own staff submitted to us had not been so underlined.

Is that correct, Mr. Doar?

Mr. DOAR. That is correct.

Mr. MAYNE. Thank you.

Mr. DENNIS. Will the gentleman yield?

Mr. MAYNE. I yield.

Mr. DENNIS. I thank my good friend from Iowa for yielding. I personally would have to say I do not see any significance to this at all. People's habits differ. If the gentleman should look at anything I read, he would find underlining all over it, because I have that habit when I am studying anything. Unless you change the text, I do not really see what difference it makes.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. St. Clair, on tab 24, the last sentence, you indicate that Dean denied he had spoken to either LaRue or Mitchell when he in fact had spoken to both. Would you direct me to the information in the tab which indicated that Dean spoke to Mitchell that day?

Mr. ST. CLAIR. I do not believe he did speak to Mitchell that day. I believe the evidence presented by the staff indicates he spoke to Mitchell on the evening of March 20. To assist you in your memory, you may recall that the call was described by Dean as rather elliptical in that Mrs. Mitchell might have been on the wire so they talked in somewhat different terms. The staff presentation, I think, would support a call to Mitchell by Dean on the 20th, the evening of the 20th.

Now, at this point, Mr. Chairman, as I said earlier, there is a verbal difference in the transcripts that I should call everyone's attention to. This is the transcript for the meeting in the late afternoon of March 21, the tape of which the committee had. This meeting took place at 5:20 and lasted until 6:01 p.m. This is the late afternoon, then, of March 21.

Now, a little more than halfway down, where the marking is indicated, Dean said on 24d, the tab relating to page 253. Our transcript showed "Well, I have not talked with either of them. Their positions are sympathetic."

Our notes of the staff transcripts as they were presented here some time ago indicate the staff, instead of the word "sympathetic," our notes indicate that the staff read that to be "something" with a blank or inaudible, following that. Again, I do not know which is right. You have the transcript, you have the tape, and I would suggest that you can accept either our version or your own version.

Mr. LATTI. Mr. Chairman?

The CHAIRMAN. Mr. Latta.



Mr. LATTI. I wonder if you would look to tab 24b, page 9, line 15, where they are discussing the matter of the payment of \$60,000 for maintenance. And the answer, "To the best of my recollection, this is true." Then they go on to say they had never discussed the \$60,000 payment with Mitchell, only the \$75,000 for attorneys' fees.

Mr. ST. CLAIR. That is correct.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. I am advised that there are two other changes in our committee transcript. In the middle of the page, where the President is speaking, the middle of the page, "Yes." It says "and is what you do about Hunt and his present finance" in the President transcript, whereas the committee's transcript has "demands" rather than "finance."

One other that is tremendously important, right beneath the middle tab where Dean is speaking, Dean says "Well apparently Mitchell and LaRue are now aware of it so they know how he is feeling." That is the President's transcript.

The committee's transcript is "So they know how you are feeling"—you're.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. In respect to that, I suggest the gentleman from California, it is my understanding that there has been a re-editing by our own staff and I think that I went over and listened to that particular section and listened to it about four or five times. I think if you do that, you will find very clearly that our original staff transcript was inaccurate. I think it has now been changed.

Mr. WALDIE. To what.

Mr. RAILSBACK. In other words, in our original staff transcript, the gentleman is right, it said "You're blank blank feeling." But when you listen to it, those of us—there were about three or four of us over there listening to it—it clearly was not that. It came out the way the President, the White House transcript is.

The CHAIRMAN. Is the gentleman suggesting that our staff has another transcript, other than that which reflects what the gentleman from Illinois is saying?

Mr. RAILSBACK. My understanding is our own staff has gone back over that part and has changed their original version. I may be wrong on it. I think that is correct, though.

The CHAIRMAN. Mr. Doar?

Mr. DOAR. I cannot tell the committee that, but I did want to call the committee's attention to one other matter, if I might, with respect to this tab.

The CHAIRMAN. I hesitate, Mr. Doar, at this time, to have you interpose. I think that in being even-handed, we had Mr. St. Clair sit here and he waited until the end. I think that we will do this appropriately at the end.

Mr. DRINAN. Mr. Chairman.

Might I suggest that the committee after lunch have available to us the transcript, our own transcript of the March 21 conversation? Those documents have now been made public by the committee and I think

that it would be very helpful if we had actually what the staff transcribed from the tapes.

The CHAIRMAN. Well, I would urge our committee counsel to do so.

Mr. OWENS. Mr. Chairman?

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I think Mr. Cohen has already asked the question. I am talking about the text on tab 24 which concludes that Dean denied he had spoken with either LaRue or Mitchell when in fact he had spoken with both. I see nothing preceding that which indicates that Dean spoke with Mitchell. It is a conclusion—I think Mr. Cohen asked it, but in reading the tab, it seems like there is a denial for something which I do not read.

Mr. COHEN. Mr. St. Clair answered it, indicating that the conversation took place on March 20.

Mr. RANGEL. But that is not in the tab. It is not related. It is just suspended in the tab.

Mr. COHEN. That is right.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

This is one of the things that I am reserving a point of order on. I suggest we wait until we are through, because it is the same sort of conclusionary statement that seems to me to be argumentive rather than factual.

Mr. DENNIS. Mr. Chairman?

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. If Mr. Doar has the factual information for the committee, might he not present that? If he agrees not to draw any legal conclusions?

The CHAIRMAN. Is there any objection on the part of the committee for Mr. Doar to make a factual statement?

Mr. DENNIS. Mr. Chairman, I personally would like to hear what he has to say about what Mr. Railsback said about the change alleged in the—

The CHAIRMAN. Then you have no objection.

Mr. DENNIS. I have no objection.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I do not know the answer to Mr. Railsback's question. But because you are going to hear the witnesses next week on this matter, I think that the committee should look back to tab 19c and see that Mr. Dean told the President in the morning meeting of his conversation with Mr. Mitchell, so that when Mr. Dean says he hadn't talked to these two people, the fair inference is that he did not talk to them between the morning and the afternoon meeting.

That is a factual statement.

Mr. McCLORY. Mr. Chairman, if we are finished with 24, could we recess and come back at 2:30 on 25?

The CHAIRMAN. The committee will recess until 2:30.

Mr. MAYNE. Mr. Chairman, before we recess—

The CHAIRMAN. We have recessed. The presentation is covered by the rules of confidentiality.

[Whereupon, at 1:30 p.m., the committee recessed to reconvene at 2:30 p.m., this same day.]

## AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. Mr. St. Clair.

Mr. ST. CLAIR. Mr. Chairman, tab 25.

Mr. McCAHILL. Having received information on March 21, 1973, of possible obstruction of justice having taken place following the break-in of the DNC, the President promptly undertook an investigation into the facts. The record discloses that the President started his investigation the night of his meeting with Dean on March 21, as confirmed by Dean in his conversation with the President on April 16, 1973. At the meeting with Mitchell and the others on the afternoon of March 22, the President instructed Dean to prepare a written report of his earlier oral disclosures.

Mr. ST. CLAIR. The tabs in support of this all come from transcripts, the tapes of which have been made available to the committee. Tab A is a section of the conversation between the President and Mr. Dean on April 16 discussing the events of March 21, and the President says, "Then it was that night that I started my investigation?" And Dean said, "That's right—that was the Wednesday before they were sentenced." And then they talk about getting the chronology of events.

Tab 25b is a discussion between the President and Dean on the afternoon of March 22 which took place at 1:57 to 3:43 p.m., and Dean, Haldeman, and the President are discussing Mr. Dean going to Camp David.

On page 283, the President instructs him to go to Camp David, get away from the phone, and the President says, "I want a written report."

Tab 25c is another selection from that same transcript also which states, "I feel that at a very minimum we've got to have this statement. Let's look at it. I don't know what it—where in the hell it is—if it opens up doors, it opens up doors, you know." Tab 26.

Mr. McCAHILL. Although Dean was instructed to go to Camp David and write a report on March 22, 1973, by the President, Dean denied this and later testified before the Senate select committee that he was never requested to write a report until Haldeman called him after he arrived at Camp David.

Mr. ST. CLAIR. The tab in support of this comes from Mr. Dean's testimony before the Senate select committee in which he testified the President told him, "Well, go on ahead, you need the break, you have been under a lot of pressure and the like," and Dean said, "He never at any time asked me to write a report, and it wasn't until after I had arrived at Camp David that I received a call from Haldeman asking me to write the report up."

Mr. THORNTON. Mr. Chairman?

The CHAIRMAN. Mr. Thornton.

Mr. THORNTON. My book does not contain the reference to the page and I would appreciate that being supplied.

Mr. ST. CLAIR. I'm sorry, sir. I will see that you get it. May I, Mr. Chairman? Which page is it?

Mr. THORNTON. The page from the transcript. I do not question the page; it is just not included in my book.

Mr. ST. CLAIR. I'm sorry, we will take care of that. Tab 27.

Mr. McCAHILL. Just 6 days after Dean's disclosure on March 27, 1973, the President met with Ehrlichman and Haldeman to discuss



the evidence thus far developed and how best to proceed. Again the President stated his resolve that White House officials should appear before the grand jury. They confirmed to the President, as Dean had, that no one at the White House had prior knowledge of the Watergate break-in. Ehrlichman told the President that there wasn't "a scintilla of a hint" that Dean knew about this. The President asked about the possibility of Colson having prior knowledge, and Ehrlichman stated that Colson's response was "of total surprise, he was totally nonplused as the rest of us."

Mr. ST. CLAIR. The tabs in support of this statement are taken from transcripts provided by the President for March 27, 1973, which were not part of the subpoenaed tapes. I think that the paragraph heading fairly quotes the context of the tabs, so we will move on to tab 28.

Mr. McCaHILL. On April 8, 1973, the President met with Ehrlichman and Haldeman on board Air Force One and directed them to meet with Dean and urge him to go to the grand jury. Haldeman and Ehrlichman met with Dean that afternoon and at 7:33 p.m. Ehrlichman reported to the President that Dean indicated he would agree to go before the grand jury.

Mr. ST. CLAIR. The tabs in support of this consist of testimony of Mr. Ehrlichman before the Senate select committee, and a portion of the transcript of the conversation taking place on April 8, which was not one of the subpoenaed transcripts. The testimony of Mr. Ehrlichman appearing on page 2757 recites a talk that took place on the airplane coming back from San Clemente on the subject matter of Dean going to the grand jury, and the President says, "I am not going to wait; he is going to go."

And then Ehrlichman says, in substance, that "we will go see Dean," or "we will see him. We don't know what that is."

Then in the transcript of the conversation that was a recorded telephone conversation between the President and Ehrlichman on April 8, which Ehrlichman reports that he went to see Dean, he says, "It went fine. He's going to wait until after he's had a chance to talk with Mitchell and to pass the word to Magruder through his lawyers that he is going to appear at the grand jury." And then he discusses that Liddy "has pulled the plug on Magruder," and he said "there is no love lost there." Tab 29.

Mr. McCaHILL. Dean did, in fact, communicate his intention to testify before the grand jury to Mitchell and Magruder and told them that he would not agree to support Magruder's previous testimony to the grand jury. Thereafter, on April 14, 1973, Magruder appeared before the U.S. attorneys and cooperated with them fully.

Mr. ST. CLAIR. Dean's testimony before the Senate select committee and Magruder's testimony on the same point are reported in support of this statement. Dean says on page 1006 near the bottom:

They were both obviously disappointed that I was being reluctant in agreeing to continue to perpetuate their earlier testimony.

And Magruder testified at the same time, after this, that he agreed to go to the U.S. attorney's office and cooperate then, as appears on page 808 of his Senate select committee testimony. Tab 30.

Mr. McCaHILL. On April 14, 1973, the President again met with Ehrlichman and Haldeman to review the results of 3 weeks' investiga-

tion and to determine the future course of action. Based on Ehrlichman's report, the President concluded Mitchell should go before the grand jury. The President instructed Ehrlichman to see Magruder and tell him that he did not serve the President by remaining silent. The President told Ehrlichman that when he met with Mitchell to advise him that "The President has said let the chips fall where they may, he will not furnish cover for anybody." The President told Ehrlichman to tell Magruder to purge himself and tell this whole story.

Mr. ST. CLAIR. The tabs in support of this come from the transcript of a nonsubpenaed tape, and insofar as Mitchell is concerned, tab a discloses, among other things, that the President stated:

I don't think Mitchell did order the Watergate bugging. I don't, and I don't think he was specifically aware of the Watergate bugging at the time it was instituted. I honestly don't.

Then at the bottom the President says:

I am not convinced he's guilty, but I am convinced that he ought to go before a grand jury.

The next section relates to the President's statements regarding Mr. Magruder, and as indicated, the President told Haldeman to tell Magruder that the evidence is coming in and he ought to go to the grand jury, "purge yourself if you are perjured and tell this whole story."

Then 30c is again from the same transcript, and again the President says by way of instruction, this time to Ehrlichman, and I believe this relates to Mr. Mitchell, tells Mr. Ehrlichman to tell Mr. Mitchell:

The President has said let the chips fall where they may, he will not furnish cover for anybody. I think you ought to say that.

Tab 31.

Mr. McCAHILL. On April 15, 1973, the President met with Attorney General Kleindienst. They considered who should be in charge of the continuing investigation. The President met with Assistant Attorney General Petersen on the afternoon of April 15, 1973, in his EOB office. At this meeting, Petersen indicated there was no criminal case on Haldeman and Ehrlichman at this time. Having been told Liddy would not talk unless authorized by "higher authority" the President instructed Petersen to tell Liddy's counsel the President would confirm his urging of Liddy to cooperate.

Mr. ST. CLAIR. The tabs in support of this involve the transcript of conversations with the then Attorney General Kleindienst, on April 15, which you may recall was a Sunday afternoon, when the tape ran out. And the portion selected for your attention has to do with consideration being given to who ought to conduct the investigation, and in particular, the suggestion of a special prosecutor.

Tab 31b is testimony of Mr. Petersen with respect to his views about the vulnerability of Mr. Ehrlichman and Mr. Haldeman as of that time, in mid-April. And he stated:

What information did you have on Haldeman and Ehrlichman at that time? What had Dean told the prosecutors about Haldeman's and Ehrlichman's involvement in the Watergate matter?

These are questions contained in Mr. Petersen's answer to Mr. Thompson and then Mr. Petersen further stated:

Well, we have not too much on Mr. Ehrlichman at that point. We had Dean's statement that Ehrlichman had told Dean to "deep six" certain information recovered by Dean from Mr. Hunt's office. If you don't mind, I will refer to my notes on this.

And then further down he indicates:

That is the basic information, the only information we had on Ehrlichman at that point.

And we have annexed a copy of his notes dated April 16, 1973, setting forth in summary form apparently his views regarding the vulnerabilities of Ehrlichman and Haldeman and Mr. Strachan.

The last tab, 31c, is a selection from the transcript of April 15, 1973, a telephone call regarding Liddy's reluctance to testify. And the President is instructing Mr. Petersen here as follows. "I just want him"—That's Liddy—

to be sure to understand that as far as the President is concerned everybody in this case is to talk and to tell the truth. You are to tell everybody, and you don't even have to call me on that with anybody. You just say those are your orders.

Tab 32.

The CHAIRMAN. Excuse me, Mr. St. Clair. I do not have in my book the 31c material that is supposed to be included as 31c.

Mr. MEZVINSKY. I don't either, Mr. Chairman.

Mr. ST. CLAIR. Well, I'm sorry. I think I should have these things checked. Tab 31c is missing, Mr. Chairman?

Mr. CHAIRMAN. In my book. I have just received it.

Mr. ST. CLAIR. Mr. Mezhvinsky needs one too. Our printing staff is working on that, and this must have been getting near the early hours of the morning.

Mr. MEZVINSKY. Thank you.

Mr. ST. CLAIR. I will make certain everyone gets full copies of everything.

The CHAIRMAN. Thank you.

Mr. ST. CLAIR. Tab 32.

Mr. McCaHILL. The President met with Dean on the morning of April 16, 1973, discussed with Dean his resignation and advised him to be totally truthful in his explanations. The President asked Dean not to lie about the President either.

At this same meeting, Dean explained to the President that O'Brien had been the one who relayed Hunt's demand, that Dean had informed Ehrlichman and Ehrlichman advised Dean to inform Mitchell, which Dean did. Dean told the President that all along he had tried to make sure that anything he passed to the President didn't "cause the President any personal problems".

Mr. ST. CLAIR. The supporting information in this tab is a selection from the transcription of April 16 between the President and Mr. Dean, which I am quite certain is one of the transcripts for which the committee does have a tape.

The CHAIRMAN. Mr. St. Clair, I am sorry to report again that I have no supporting material in tab 32a, 32b.

Mr. ST. CLAIR. Well, I apologize.



Ms. HOLTZMAN. If I may join with you I have none of the materials in any of the supporting tabs behind 32.

Mr. ST. CLAIR. I apologize. During a recess, if we may check these books, we will be certain that you get them.

In that event, however, I will read a little more thoroughly the portions involved, which are not extensive.

From this conversation with Mr. Dean on page 805 of the President's submission appears the following statement by the President to Mr. Dean. The President said, "Thank God. Don't ever do it, John. Tell the truth. That is the thing I have told everybody around here." And then there is an expletive omitted. "Tell the truth. All they do, John, is compound it."

Then further down, Mr. Dean says, "The truth always emerges, it always does." And the President responds, "Also there is a question of right and wrong, too." Mr. Dean says, "That's right."

Then down at the bottom of the very last line there is a discussion about Mr. Mitchell and the President, and Mr. Liddy's refusal to talk. And Mr. Dean says, "Well, he," meaning Liddy, "obviously is looking for the ultimate, but I think he is looking for the ultimate. He has the impression that you and Mitchell probably talk on the telephone daily about this." And the President said, "You know, we have never talked about this."

Then on 32b, that whole page I think is fairly summarized in our tab, and I will not bother to read it. It runs over the next 2 or 3 pages.

And on the last page, which is numbered 799, Mr. Dean comments, "I have tried all along to make sure that anything I passed to you myself didn't cause you any personal problems."

Tab 33. I hope this exists.

Mr. McCAHILL. On April 27, Petersen reported to the President that Dean's lawyer was threatening "that unless Dean got immunity, they would bring the President in—not in the case but in—" There is a misprint here. It should read: "Not in this case but in other things." The President told Petersen to use immunity if he needed to get the facts, but there would be no blackmail. It was not until June 25, 1973, while testifying before the Senate select committee, that Dean stated that the President had prior knowledge of the coverup.

Mr. ST. CLAIR. The supporting information is the transcript of a discussion on April 27, 1973, which is not one of the subpoenaed tapes, in which the President said to Mr. Petersen, "All right, we have got the immunity problem resolved. Do it, Dean, if you need to, but boy, I am telling you—there ain't going to be any blackmail." Tab 34.

Mr. McCAHILL. On March 1, 1974, a Federal grand jury returned an indictment against seven individuals, charging all defendants with one count of conspiracy and violation of title 18, United States Code, section 371, and charging some of the defendants with additional charges of perjury, making false declarations to a grand jury or court, making false statements to agents of the FBI, and obstruction of justice.

Mr. ST. CLAIR. We have annexed here count 1 of the indictment, and I would direct the attention of the committee to the second to the last page, on which there appears overt acts commencing with Nos. 39

through 44. I would call the committee's attention especially to overt acts Nos. 40, 41, 42, and 43.

In No. 40, it is alleged that on or about March 21, 1973, from approximately 11:15 a.m. to approximately noon, Harry R. Haldeman and John W. Dean III attended a meeting at the White House in the District of Columbia at which time there was a discussion about the fact that E. Howard Hunt, Jr., had asked for approximately \$120,000. It would appear that this is a clear reference to the meeting at which also the President was in attendance on that morning, the transcript of which and tape of which has already been alluded to on a number of occasions.

Paragraph 41 says on or about March 21, 1973, at approximately 12:40 p.m., Harry R. Haldeman had a telephone conversation with John N. Mitchell. That, of course, makes reference to the telephone conversation to which reference has earlier been made.

Paragraph 42 says on or about the early afternoon of March 21, 1973, which, sir, is the source of my suggestion that it was early afternoon as we discussed at the noon recess, John N. Mitchell had a telephone conversation with LaRue during which Mitchell authorized LaRue to make a payment of approximately \$75,000 to and for the benefit of Hunt.

And then paragraph 43 says on or about the evening of March 21 in the District of Columbia Fred LaRue arranged for the delivery of approximately \$75,000 in cash to William O. Bittman. I would only make this observation, that that series of alleged overt acts carries what to me is a clear implication, and I only suggest to the committee that a careful review of the evidence which is already before you simply does not support the implication.

Mr. RAILSBACK. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. St. Clair, in a statement that you submitted in support of your letter given to the committee yesterday, that part relating to the need to call John Dean for a witness, now maybe Mr. Wiggins previously asked you this, but I missed it if he did. I think you say in your statement that John Dean, if called, would testify that he made the telephone call to LaRue before that meeting with the President. Did I miss it, or is it your belief that that is what John Dean would testify to?

I take it that that is not—we do not have any evidence of that in the materials that you have presented to us?

Mr. ST. CLAIR. No. The grand jury testimony establishes that Dean did call LaRue on the subject matter and that Haldeman did not.

Mr. RAILSBACK. Yes. That is right.

Mr. ST. CLAIR. I have information that leads me to believe that Mr. Dean would testify that that conversation took place in the morning.

Mr. RAILSBACK. I see. Before the meeting with the President?

Mr. ST. CLAIR. Before the meeting with the President, but the final proof of what his testimony would be is when he appears as a witness.

Mr. RAILSBACK. Thank you.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. St. Clair, I did not get your last concluding sentence. Did you say it does not justify the implication? You ended this sentence with implication, and I was not sure what you were intending.

Mr. ST. CLAIR. Well, I hesitate to argue the matter at this moment, Mr. Waldie, but this sequence of events in this indictment would suggest a chain of communication from a meeting at which the President was a party, a participant to Haldeman, to Mitchell, to LaRue, to Bittman. The evidence, however, that the grand jury had before it was that Haldeman did not communicate the subject matter to Mitchell, but in fact, Dean communicated it to LaRue and LaRue communicated it to Mitchell, completely bypassing the President.

Mr. WALDIE. All right, so you are arguing that the grand jury erred in its—

Mr. ST. CLAIR. I will argue that at the appropriate time.

Mr. WALDIE. Well, what you just argued was an inappropriate time?

Mr. ST. CLAIR. Well, you asked the question and I answered it. I think it deserves a more careful argument at a later time in a brief.

Mr. WALDIE. All right.

The CHAIRMAN. That concludes that book?

Mr. ST. CLAIR. That concludes this book and the presentation of the President with respect to the Watergate phase of this inquiry, Mr. Chairman.

Could we have the next book distributed, Mr. Chairman?

Mr. OWENS. Mr. Chairman, while they are changing the books could I ask one further question?

Mr. SEIBERLING. Mr. Chairman?

Mr. OWENS. May I ask one question of Mr. St. Clair?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. You said at paragraph 40 if I may refer you back to the concluding tab, I am sorry, 44a, paragraph 42 you said was the source of your prior statement that the Mitchell-LaRue conversation—was that the conversation you referred to earlier took place in the early afternoon?

Mr. ST. CLAIR. We had before the noon recess a discussion I think with Congressman Wiggins about how did I get the suggestion of early afternoon.

Mr. OWENS. Yes, I remember that conversation.

Mr. ST. CLAIR. And during the recess at noon I was reminded that it came from this reference.

Mr. OWENS. Did I then understand you to say that you do not think that the information the grand jury had was sufficient to justify at least the ultimate conclusion as to the chain of events here?

Mr. ST. CLAIR. It is my contention that not only does it not justify it but it contradicts it.

Mr. OWENS. Then my question is if you have further information to pinpoint the time of that conversation between Mr. Mitchell and Mr. LaRue beyond the conclusion of the grand jury, which you say is not adequately supported by the evidence?

Mr. ST. CLAIR. Well, sir, I have no further information on that point, and the point is, the only, or nothing in my analysis turns on when that conversation took place.



Mr. OWENS. You have no further information on that?

Mr. ST. CLAIR. The analysis has to do with who called whom with respect to these matters.

Mr. OWENS. Right.

Mr. ST. CLAIR. The point we don't know is when Dean called LaRue. That's what we don't know.

Mr. SEIBERLING. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. SEIBERLING. Is this the appropriate time to raise the points of order which I averted to earlier or should I wait until all of the presentation is made?

The CHAIRMAN. I believe it would be more appropriate if we were to wait until the presentation had been complete.

Mr. RANGEL. On that—

Mr. SEIBERLING. Very well.

Mr. RANGEL. On that point, Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Would it be possible for counsel to this committee that has thoroughly—

The CHAIRMAN. The gentleman is entitled to be heard.

Mr. RANGEL. In connection with all of us reserving all of our objections until after the complete presentation, would it be possible for counsel for this committee to assist us in terms of the factual information as presented to us by the President's counsel? I recognize that he is not at liberty now to engage in any exchanges, and we want to expedite it, but I think it would also be fair to the members of this committee since they have studied all of the transcript if they would prepare for us a short memorandum as to the questions of fact.

The CHAIRMAN. I believe that that would be in order and it would be at that time, it would be appropriate, since we have already by resolution stated that Mr. St. Clair would make his presentation uninterrupted until such time as he had completed it and at that time we can certainly solicit from counsel for the committee that assistance.

Mr. RANGEL. Thank you.

Mr. DENNIS. Mr. Chairman, may I raise a question just for discussion purposes?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Sometime back Mr. St. Clair attempted to present an argument or a brief of some sort to this committee and it was not accepted at that time. But, I raise the question whether in questioning Mr. St. Clair here, or in following the drift of his argument, it might not be of great assistance to us—we do not have to buy it necessarily, lock, stock and barrel—but of assistance to us in understanding the presentation to have it at this time.

The CHAIRMAN. I want to advise the gentleman from Indiana that our counsel is precluded from making any advocate arguments regarding the detailed information that he has presented, and I believe that while we recognize that Mr. St. Clair had made an effort to present this committee with a brief, we have advised Mr. St. Clair that at the appropriate time that brief, which is an argument brief, would be appropriately presented to the committee. But, I believe it

would be inappropriate at this time to do other than to receive what is supposed to be detailed information presented in the same fashion as our committee counsel was required to present.

Mr. DENNIS. Well, my only thought was, Mr. Chairman, that at least this member would be assisted in his general comprehension if he had that or anything our counsel might want to present. I am not a bit discriminatory about it, but I need all of the help I can get, like Charlie Brown.

The CHAIRMAN. Mr. St. Clair, I believe the books have been distributed.

No, I am sorry.

Mr. St. Clair, would you also provide, as you did for volume 1, just a separate set?

Mr. ST. CLAIR. It is in the process of being prepared for all of the balance of the books, Mr. Chairman.

Mr. DENNIS. May I ask counsel one more question, Mr. Chairman? Mr. St. Clair?

Mr. ST. CLAIR. Yes, sir.

Mr. DENNIS. Did I understand you to say a moment ago that you understood or believed that Mr. Dean would say that his call to LaRue was on the morning of March 21?

Mr. ST. CLAIR. That is my information. I would much prefer to hear him say it.

Mr. DENNIS. I understand that and I just wanted to be sure that I understood correctly what you said. All right.

The CHAIRMAN. Have all of the books been distributed?

Mr. ST. CLAIR. Mr. Chairman, members of the committee, the second book deals with the ITT phase of the inquiry. I think it might move much more rapidly than indicated by the size of the book. We have included rather extensively some textual materials that would probably be better dealt with by reading at your leisure rather than discussing them in detail here but we are making them here available so that the issues can be perhaps better understood. Tab 1.

Mr. SARBANES. Could I ask a question?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. St. Clair, when you said the first notebook was the Watergate, are you later going to pick up the period subsequent to April 30 that relates to Watergate?

Mr. ST. CLAIR. We have no present plan of doing anything more than the committee's presentation on that. I do not know that we could significantly add in terms of fact.

Mr. SARBANES. Thank you.

Mr. ST. CLAIR. Tab 1.

Mr. McCAHILL. In December 1969, Richard W. McLaren was interviewed for the position of Assistant Attorney General, Antitrust Division, Department of Justice, by John M. Mitchell and Richard G. Kleindienst. As a condition of his acceptance of that position, Mr. McLaren insisted that antitrust enforcement decisions would be based solely on the merits of any given situation.

Mr. ST. CLAIR. The tab in support of this is in substance as indicated in the reference to Mr. McLaren's testimony at 1a and Mr. Kleindienst's testimony in 1b. Tab 2.

Mr. McCaHILL. In 1968, Mr. Nixon appointed a task force on productivity and competition to review antitrust policy and make recommendations. The task force, headed by Prof. George Stigler of the University of Chicago, presented its report to President Nixon on February 18, 1969, and recommended against immediate legal action re conglomerate mergers.

Mr. ST. CLAIR. The Stigler report is referred to in a reference from the Congressional Record of the Senate under date of June 12, 1969, which is tab 2a. And I would direct your attention to paragraph 8 in the lefthand column which reads,

We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises pending a conference to gather information and opinion on the economic effects of the conglomerate phenomena.

Tab b in a similar reference from the so-called ITT white paper published by the President in which he makes reference to Professor Stigler's report.

Tab 2c are remarks made by Mr. Harold S. Geneen with respect to this policy and his references are contained in the second page of his statement which was made on June 26 at 2 p.m. Tab. 3.

Mr. McCaHILL. Apparently, in June 1969, Mr. Geneen sought to meet with President Nixon about certain financial and economic concerns of ITT including, but not limited to, the antitrust suits.

John N. Mitchell, for one, thought the meeting would be inappropriate because of ITT's legal involvement with the Department of Justice.

The meeting was not scheduled.

Mr. ST. CLAIR. Tab 3a is a letter addressed to the President in which the President is advised that Mr. Geneen had asked to see him to discuss business matters that would be from both a national and an international standpoint and a letter addressed to Mr. Stans on the letterhead of ITT which deals at some length with these general policies. This is a letter from Mr. Geneen.

The response is a letter or memorandum rather from Mr. Mitchell to Mr. Ehrlichman of July 14, 1969, which is tab 3b. And Mr. Mitchell says, among other things, that "I would see no reason for the President to see Mr. Geneen unless he wants further review of the antitrust problems from him." And so forth and so on. He goes on to say, "Needless to say, the Geneen letter attached does not reflect accurately the legal position of the Justice Department in the antitrust suit. It might be well to leave this letter with Maury Stans for a followup on the balance of payments matter."

And then the final document in this connection is a memorandum from Mr. Peter Flanigan dated July 16 relating to the proposed appointment with the President with Harold Geneen of ITT from Mr. Chapin, and it states in substance that they have not scheduled an appointment for Mr. Geneen and suggests that they talk with Mr. Bryce Harlow to see if it is agreeable with him to call Wilson and explain why it would be appropriate for the President to see Mr. Geneen. Tab 4.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.



Ms. HOLTZMAN. I take it that the attachment, the attached memorandum that is referred to in tab 3c, has not been included in our materials?

Mr. ST. CLAIR. We think that it is the letter of June 3, 1969, on the letterhead of International Telephone & Telegraph Corp., but we cannot verify that it is. The content and the subject matter would seem to indicate that that is it, but we cannot say definitely that it is. Tab 4.

Mr. McCAHILL. In March 1971, the Solicitor General authorized an appeal to the Supreme Court from an adverse decision in the *United States v. ITT (Grinnell)* case because of practical difficulties in the future if the decision were left standing. The Solicitor General and his associates thought the case to be very hard; his chief deputy thought the Government's chances of winning were minimal.

Mr. ST. CLAIR. We have annexed here—perhaps too extensively. I am not sure—some of the memorandums of officials charged with the decision whether or not to appeal. The first one is from Mr. Randolph to the Solicitor General under date of March 2, 1971, and at page 8 thereof, in the first full paragraph, he concludes,

Unfortunately, I must conclude that neither theory comes even close to holding water. Quite frankly, we should not attempt to take a case to the Supreme Court on such a flimsy basis.

Now, this memorandum dealt with a number of things, the first paragraph of which says he recommends an appeal. But if you read the content of it, you will find that I think the appeal is recommended more for tactical purposes than it is for substantive purposes.

The next tab is 4b, a memorandum for the Solicitor General, again recommending an appeal—

Mr. McCLORY. Mr. Chairman, that is the second bell.

The CHAIRMAN. Mr. St. Clair, that is a record vote and we will have to recess and come back within 10 minutes.

[Recess.]

The CHAIRMAN. The committee will come to order. Mr. St. Clair.

Mr. ST. CLAIR. Thank you, sir. I would like to correct a statement I made just prior to the recess regarding tab 4a. This is a rather long memorandum, the overall effect of which is to recommend an appeal. Over the first 8 pages, I think two theories are discussed, and at the top, the writer concludes that neither of those theories comes even close to holding water.

However, thereafter, he does describe other approaches that he says would justify prosecuting an appeal by concluding on the last page:

In my view, a win on either or both of these grounds will go a long way toward halting the trend toward conglomerate mergers and will certainly be a significant step in the direction that Mr. McLaren has indicated the Department of Justice should move.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. A clarifying question; the statement you just made with regard to the correction is to what you stated before we took the brief recess, when you said the recommendation was an appeal based on tactical reasons only?

Mr. ST. CLAIR. Yes, I am correcting that.

Ms. HOLTZMAN. And you are saying that is not the case?

MR. ST. CLAIR. Yes.

MS. HOLTZMAN. Thank you.

MR. ST. CLAIR. The next memorandum is tab 4b. This is from a Mr. Daniel M. Friedman in which he also recommends an appeal. The first paragraph in the memorandum states in the last sentence :

Considering all the circumstances, we really have no choice but to seek Supreme Court review of this decision which, if left standing, would be a serious adverse precedent that probably would doom our remaining cases and would also make it extremely difficult to proceed against future conglomerate mergers.

Then he discusses——

MR. WALDIE. May I interrupt a moment ?

MR. ST. CLAIR. on the tab, you have "The Solicitor General and his associates thought the case to be very hard." Do you mean hard in the terms of solid or hard in the terms of difficult ?

MR. ST. CLAIR. Hard in terms of winning—very difficult I think is a fair intendment.

MR. WALDIE. Difficult—OK, thank you.

MR. ST. CLAIR. Mr. Friedman's memorandum on the bottom of the last page in recapitulation states, "to recapitulate : this is an extremely difficult case, and our chances of winning in the Supreme Court seem minimal. Nevertheless, I think we have no practical choice but to appeal."

I think this, Ms. Holtzman, is where I got the idea that consideration was given that largely on tactical grounds, they did not want to acquiesce in an adverse decision.

Finally, tab 4c—not finally, but at tab 4c is another memorandum from the Department of Justice. Again, the last sentence of the first paragraph really says, "And finally everyone agrees that our chance of prevailing on these arguments is mighty slim."

Tab 4d is the memorandum from the office of the Solicitor General agreeing that an appeal should be authorized stating, "But the precise scope and form of our arguments must await the jurisdictional statement: we should not attempt to foreclose making any arguments that either hold out some prospect of success or, even if they really do not, present a theory upon which the Supreme Court should rule—if only to open the way for legislation."

MR. DRINAN. Mr. Chairman ?

THE CHAIRMAN. Father Drinan.

MR. DRINAN. Point of clarification.

MR. ST. CLAIR. in this voluminous material you have given us here, does anyone make the point that the appeal would be contrary to the recommendations of the task force headed by Prof. George Stigler ?

MR. ST. CLAIR. I do not think there is such a reference here, Father Drinan.

MR. DRINAN. Is there any information that consideration was given to that and that they felt this was not within the recommendations of the Stigler report ?

MR. ST. CLAIR. Frankly, sir, I do not know, but I will check it.

MR. DRINAN. Thank you.

MR. ST. CLAIR. You will recall, however, a rather pointed telephone conversation from the President on the subject of whether or not this appeal should be prosecuted.

Mr. DRINAN. He did not mention the Stigler report, though.

Mr. ST. CLAIR. He mentioned something about foreign policy—I do not know whether he mentioned the Stigler report or not.

Mr. DRINAN. Thank you.

Mr. ST. CLAIR. Finally, a retyped brief memorandum signed by Erwin Griswold as Solicitor General to which Representative Waldie, I think, made reference a few moments ago, in which he says at the bottom in his handwriting, "I think this is a very hard case, but it is an important one and Anti-Trust wants to go ahead, and it is in the public interest, I think, that we should learn more about what the law is in this area."

Mr. SEIBERLING. Mr. Chairman, I wonder if I could ask a question.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I wonder if Mr. St. Clair could advise us as to whether the conference that was referred to in the task force report at tab 2a which says: "We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises, pending a conference to gather information and opinion" et cetera. Do you have any evidence as to whether any such conference was in fact held prior to the time the President ordered that the appeal not be taken?

Mr. ST. CLAIR. I am sorry, sir, I do not.

Mr. SEIBERLING. Thank you.

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. The underlining of the word "and" in the retyping from the indistinct original—I do not see that on the original and I wonder how it was placed there.

Mr. ST. CLAIR. I do not think it should properly be underlined. I do not know why it is and I would ask that it be crossed out. I do not see anything in the handwriting that would justify that.

It is explained to me that the staff could not be sure that it was "and" and that would be the reason for the underlining. They advise me that it was not to emphasize. Tab 5.

Mr. McCAHILL. After the President's telephone call of April 19, 1971, to Kleindienst ordering him to drop the Grinnell appeal, Kleindienst met in his office with McLaren and the Solicitor General and requested the Solicitor General to apply for an extension. McLaren had no objection to the application for an additional extension of time.

Mr. ST. CLAIR. The tabs in support of this constitute testimony of Mr. Griswold, Mr. McLaren—now Judge McLaren—and Mr. Kleindienst, and I think support the proposition that an application for an extension should be made. Tab 6.

The CHAIRMAN. We will have to declare another recess. We will go to vote and return.

This is a vote on the Symms amendment to delete \$34 million from the HEW appropriation to hold that funding at last year's level.

[Recess.]

The CHAIRMAN. Mr. St. Clair.

Mr. ST. CLAIR. Thank you, Mr. Chairman. Tab 6.

Mr. McCAHILL. On June 17, 1971, McLaren recommended to Kleindienst that the ITT suits be settled. Kleindienst approved the pro-



posed settlement by writing "Approved, 6/17/71. RGK." In affixing his approval Kleindienst relied on the expertise of McLaren.

Mr. ST. CLAIR. Tab 6a sets forth a portion of the hearings before the Committee on the Judiciary of the U.S. Senate regarding the nomination of Mr. Kleindienst to be Attorney General and the memorandum referred to appears on page 111 of that testimony. The memorandum is set forth entirely and bears the approval of Mr. Kleindienst on page 112.

The settlement—I think at this point, I should make the point with you that from this point on, we are no longer dealing with subject matter as to whether or not the adverse decision below should be appealed. From this point on, we are dealing with settlement of the case and after settlement. Tab 6b.

Mr. Kleindienst says: "That is the only reason why I went along with it. He recommended it"—"he" being McLaren. Tab 7.

Mr. MCCABILL. Settlement initiations had taken place in late 1970. ITT's settlement posture advanced included its keeping the Hartford Fire Insurance Co. McLaren rejected any settlement talk along that line.

In early 1971, ITT began to formulate a plan, based on economic theory, of why it was important for ITT to retain Hartford. Eventually, on April 29, 1971, ITT made an economic presentation to the Department of Justice on national economic consequences if ITT were forced to divest itself of Hartford. As a result of that presentation, in combination with the Ransden report and from his own independent financial expert, McLaren proposed a settlement offer enabling ITT to retain Hartford.

Mr. ST. CLAIR. The tab in support of this contains a memorandum, 7a, dated August 7 from the Department of Justice. We call the attention of the committee to the next to the last paragraph on page 2, in which reference is made to ITT's willingness to consider an injunction of some years duration against further acquisitions as a means of settling. It concludes in the last sentence of that paragraph that "Mr. McLaren indicated that he felt that divestiture was the proper remedy here."

Tab 7b is a memorandum of negotiations. This memorandum is signed by Mr. McLaren. We call special attention—this is now August 18, 1971. We call special attention to the second paragraph, in which he recites an indication of willingness, that ITT would be willing "to divest Canteen, the principal parts of Grinnell and ITT-Levitt as well as certain other subsidiaries"—"provided that they could retain Hartford."

Mr. McLaren noted in the memorandum "I said that this was out of the question." And that Mr. Jacobs wrote a letter substantially confirming the discussion.

Tab c is further regarding the negotiations with respect to this settlement. Mr. Geneen's testimony is the next tab. This is, I think, testimony on a deposition in which, on the first page, Mr. Geneen states that in January 1971, he was informed that Mr. McLaren had rejected a proposal to settle the three cases pending and he—that is Geneen—was inquired of as to why ITT was so insistent against having a divestiture of Hartford included in any possible settlement. Mr. Geneen testified:

We understood Mr. McLaren's question to mean that it would take a detailed financial and economic presentation on the importance of Hartford to ITT to persuade the Justice Department that divestiture of Hartford could not realistically be expected to be part of any voluntary settlement of these three anti-trust cases.

Accordingly, preparations thereafter began for a presentation to the Department of Justice on the adverse economic and financial impact on ITT and national policy concerns which a divestiture of Hartford would have and it was eventually decided that Mr. Felix Rohatyn, an ITT Director and an acknowledged expert in the financial community, should take the lead in making this presentation.

You may recall that Mr. Rohatyn's efforts in this regard were rather carefully detailed by the special staff in its presentation.

The next step in connection with the settlement negotiations had to do with the arrangements for it and the presentation of Mr. Kleindienst's testimony regarding this at tab 7d, I think is not particularly remarkable.

Mr. Rohatyn's letter to Mr. McLaren is the next item, tab 7e. We call special attention to the second paragraph thereof, in which he points out that the divestiture of the Hartford would place ITT in a very difficult cash position which would severely impact its ability to compete in markets abroad.

He goes on and gives other economic reasons why ITT should be allowed to keep Hartford.

The next step in the negotiations referred to is Mr. McLaren's testimony before the Senate Committee on the Judiciary in connection with Mr. Kleindienst's nomination in which he discusses the acquisition of Hartford and the details with respect to the settlement.

Finally, then, 7g is the testimony of Mr. Kleindienst before the Senate Committee on the Judiciary. That appears at page 1736 of the testimony. Mr. Kleindienst is describing, I take it, the final decision, in which he said "The nondivestiture of Hartford but they have to do other things." I said, "If that is good enough for you, that is fine with me" and we called up Rohatyn.

Senator Bayh says,

The whole sum and substance of the reason for subjecting you and various individuals associated with ITT to these hearings goes to the thrust of the Government case against ITT and why its position was changed.

Mr. Kleindienst responds,

Well, he outlined in precise detail his proposed framework for a settlement, and he gave me his reasons for it.

The "he," I think is quite clearly Mr. McLaren. Tab 8.

Mr. McCahill. On July 31, 1971, the *ITT* cases were finally settled. Whether ITT would have to divest itself completely of Grinnell was a principal matter of consideration between June 17, the date of Mr. McLaren's proposal, and July 31, and in ITT's eyes, a matter upon which any settlement hinged.

According to McLaren and Kleindienst, McLaren and his staff were responsible for the settlement. Kleindienst did not talk with McLaren about this matter at any time from June 17 until July 30. Mitchell and McLaren never talked with each other about the cases. There exists no testimonial or documentary evidence to indicate that

the President had any part, directly or indirectly, in the settlement of the ITT antitrust cases.

McLaren was unaware of any financial commitment by ITT in regard to San Diego's hosting of the Republican National Convention until long after the negotiations had terminated. McLaren has stated ITT's contribution had nothing to do with the settlement.

Mr. ST. CLAIR. This tab is supported by a variety of tabs, the first being an affidavit by Mr. Geneen in which he deals with the subject matter of the necessity of a Grinnell divestiture and the importance of that to his thinking in the matter.

The next tab is 8b. This is testimony before the Senate Committee on the Judiciary. This is the testimony of Mr. McLaren, and we call your attention especially to the bottom of page 113, in which he says: "In conclusion, I want to emphasize that the decision to enter into settlement negotiations with ITT was my own personal decision; I was not pressured to reach this decision. Furthermore, the plan of settlement was devised, and the final terms were negotiated, by me with the advice of other members of the Antitrust Division, and by no one else." On the next page, page 361, is an interchange with Senator Kennedy. Within the markers we have Senator Kennedy quoting Senator Hart: "What discussions did you have with John Mitchell with respect to any aspects of the ITT cases?"

"Mr. Kleindienst said, 'None,' and Senator Hart said: 'Mr. McLaren, Judge McLaren?'"

"And Judge McLaren said, 'I had none, sir.'"

Mr. McLaren said, "I think that would be correct. There is a 'buck' slip showing that the Attorney General's executive assistant simply bucked the matter down to Mr. Kleindienst."

I think a fair intendment is that Mr. Kleindienst did not discuss the matter at any time with Mr. Mitchell.

On the next page, Mr. McLaren says: "Absolutely not. The Attorney General did not talk to me about the case. I did not talk to him about the case. I never heard of Mrs. Beard, if that is her name, until this thing broke, and knowing what I know about this whole settlement thing, her memorandum is absolutely incredible."

Mr. Kleindienst says, "I will join in that statement in total."

The next page, with reference to Kleindienst and the Mrs. Beard matter, the chairman asked Judge McLaren, about two-thirds of the way down, "Judge McLaren, you say you were solely responsible for this settlement, with your staff?"

"Mr. McLAREN. I am sorry. I could not hear the last sentence."

The Chairman says "Did I understand you to say that you were, you and your staff were solely responsible for this settlement?"

Mr. McLaren says, "That is my testimony; yes, sir."

And there are more statements to that same effect on page 117 and other pages with respect to this same testimony which I think would only be cumulative for me to call to your attention. But I do invite your reading of the marked portions, at least those that are marked, when you study this matter.

Mr. ST. CLAIR. Tab 8c is testimony of Mr. Kleindienst with respect to the settlement was recommended by Mr. McLaren and his staff, that he approved of it, and that he relied on Mr. McLaren in approving of it.



Mr. WIGGINS. Mr. Chairman?

Mr. EDWARDS [presiding]. I am sorry, Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, we are on tab 8c, is that correct?

Mr. ST. CLAIR. Yes, sir.

Mr. WIGGINS. Would you return, please, to 8b?

Mr. ST. CLAIR. Yes, sir.

Mr. WIGGINS. And the pages following 8b are not numbered consecutively, but perhaps taken at random from Mr. Kleindienst's testimony and the last page under that tab or the next to the last page under that tab in my book is page 100.

Well, I refer you to page 116.

Mr. ST. CLAIR. Yes, sir. I have it.

Mr. WIGGINS. At the top of the page, the bracketed material and it is not at all clear to me who is speaking at that point, because apparently it is not Mr. McLaren, but I do not know who it is.

Mr. ST. CLAIR. I thought it was Mr. McLaren.

Mr. WIGGINS. I doubt if Mr. McLaren is the director of the company.

Mr. ST. CLAIR. I doubt if he is.

Mr. WIGGINS. The person speaking said that he is and that leads me to believe that perhaps it was not Mr. McLaren.

Mr. ST. CLAIR. I hope he is not. I simply do not know the answer and I will have to get you the previous page on that. But, I will do so the first thing in the morning.

Mr. SARBANES. Mr. Chairman?

Mr. EDWARDS. Mr. Sarbanes.

Mr. SARBANES. Could I ask if there is some reason why the pages are not—I mean I do not expect every page to be there, but why are they not numbered in order, and they skip around as they do in that tab?

Mr. ST. CLAIR. I frankly do not know the reason. Mr. Howard advises me that they are arranged in order to support the description of the paragraph. I thought, now perhaps maybe the paragraph ought to follow the testimony, but that is apparently the reason.

Then I think it was on 8d or 8c; excuse me. I was calling attention to the testimony on page 99.

Mr. EDWARDS. That is at 8c for Charlie, correct?

Mr. ST. CLAIR. Yes, sir. Now, I would like to direct your attention to page 1732 of 8c and Mr. Kleindienst is answering questions from Senator Bayh. Now, at the bottom of that area that we have marked, first of all Senator Bayh asked: "And as I recall the hearing, at least part of the answer to the last question was your reliance on Judge McLaren as really the whole reason this case was resolved as it was?"

Mr. Kleindienst said: "You mean that Judge McLaren had recommended the solution?"

Senator Bayh. "Yes, sir."

Mr. Kleindienst. "That is the only reason why I went along with it."

And d is Mr. Rohatyn's testimony before the Senate Judiciary Committee on page 119, where he testifies, "I would say that Mr. Kleindienst was very polite and listened to me and kept repeating to me, essentially, that the discussions of the negotiations and settlement would have to be handled by Mr. McLaren in the Antitrust Division."

Tab 8c is testimony of John Mitchell at the same hearing on the nomination of Mr. Kleindienst. On page 541, he stated, as we have

marked in the margin: "I have never talked to the Deputy Attorney General or the Assistant Attorney General in charge of the Antitrust Division about the San Diego convention or anything relating to any discussions or negotiations with ITT or any of its subsidiaries."

And 8f, Judge McLaren is again testifying in the same hearings in response to a question from Senator Kennedy. "At any time, did you talk about the ITT case with Mr. Flanigan or anyone in the White House?"

Judge McLaren replies: "I do not believe so."

Senator Kennedy. "So you did not have any communication with anyone in the White House in anyway about the ITT case?"

Judge McLAREN. "Not that I recall at this time, and I think I would recall if I had."

Tab 8g is a transcript of a broadcast of Face the Nation, in which Judge McLaren apparently appeared, and with respect to the question on the Republican Party in connection with the litigation, McLaren stated, as outlined in the margin: "I just have no way of commenting on that. I know nothing about it. It never came to my attention where the convention was going to be until long after our negotiations."

And I think we have probably cut off the margin here, and it should be never met Mrs. Beard. "I never had anything to do with that. According to their story, as I understand it, for the big hotels to make contributions, particularly," and so forth, and he goes on, and the thrust of it is he didn't know anything about the discussions for the convention at San Diego for the Republican Party. He says further down the page, "I knew nothing about it at the time, and guarantee you that the Republican Convention site and ITT's—" Well, in any event, the substance of it is that it had nothing to do with the settlement, the Republican Convention site and the settlement were in no way connected, according to Judge McLaren in his statement. Tab 9.

Mr. DRINAN. Mr. Chairman?

Ms. HOLTZMAN. Mr. Chairman?

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. Point of clarification. On tab 8 it states that there exists no testimonial or documentary evidence to indicate that the President had any part directly or indirectly in the settlement of the ITT antitrust cases. And then back on tab 5 it says after the President's telephone call to Kleindienst ordering to drop the Grinnell-ITT appeal.

Now, I can see technically, the testimony and documentary evidence doesn't exist, but what sort of evidence would be the order of the President on the phone? That is not testimonial or documentary?

Mr. ST. CLAIR. Mr. Chairman, may I respond?

Mr. EDWARDS. Yes. Mr. St. Clair.

Mr. ST. CLAIR. Father Drinan, the President's phone call had to do with the decision to drop the appeal. This testimony establishes, we suggest, that the settlement of the cases was done solely by Judge McLaren without interference from anybody. We view those two as two separate events.

Mr. SEIBERLING. Mr. Chairman?

Mr. EDWARDS. Mr. Drinan, are you through? Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman. I wonder if Mr. St. Clair could provide to me at least a fully legible xerox copy of tab 8g, which was cut off in my copy?

Mr. ST. CLAIR. Mine is cut off, too, and we will have to make a non-cut-off copy available to everyone.

Ms. HOLTZMAN. Thank you.

Mr. EDWARDS. Mr. Seiberling.

Mr. ST. CLAIR. Tab 8g was it, Ms. Holtzman?

Ms. HOLTZMAN. I believe so.

Mr. SEIBERLING. Mr. Chairman, I wonder if I could ask Mr. St. Clair whether to his knowledge any of the tapes that we subpoenaed that have not been delivered contain a justification that they related to, possibly related to the settlement of the *ITT* case?

Mr. ST. CLAIR. The only justification, sir, that I would have for making that assertion is the testimony principally of now Judge McLaren that he did it, and he did it alone with his staff.

Mr. SEIBERLING. No. My question was whether, to your knowledge, the tapes that we subpoenaed carried, the tapes subpoenaed carried with it a statement as to the justification for the particular tape being subpoenaed which indicated that that tape may relate, might have related to the settlement of the *ITT* cases? Do you know whether that is the case?

Mr. ST. CLAIR. I am not familiar with the contents of those tapes. I believe you are making reference to a subpoena that was served 2 or 3 weeks ago.

Mr. SEIBERLING. Yes. I don't recall whether the statement of the reasons why we wanted the particular tapes included any statement that indicated that any of the tapes were sought as possibly being related to the *ITT* settlement.

Mr. ST. CLAIR. I don't know. I will be glad to review that statement.

Mr. SEIBERLING. Because if they did, then this statement that there exists no testimonial or documentary evidence might have to be modified.

Mr. ST. CLAIR. Well, if it has to be modified, then Judge McLaren's testimony is wrong.

Mr. SEIBERLING. Well, it might possibly be that he would not know about aspects of this matter, all aspects.

Mr. ST. CLAIR. Well, I don't mean to argue the point, except he says he did it, and that he did it alone, and only with members of his staff.

Mr. SEIBERLING. Well, Mr. Kleindienst made a similar statement and was found to have made a false statement, so I think we are entitled to get any possible relevant evidence.

Mr. ST. CLAIR. I will look up that reference and see if that will shed any light on this matter.

Mr. SEIBERLING. Thank you.

Mr. SARBANES. Mr. Chairman, could I follow up on that?

Mr. EDWARDS. Yes, Mr. Sarbanes.

Mr. SARBANES. For clarification. Do I understand that the only—I don't understand the basis for the statement that there exists no testimony or documentary evidence in this tab. I looked, and I did not see any positive statement at any point where they said there had



been any search for documentary evidence or anything of that sort, and concluded that none was present or available or had been discovered or anything of that sort. Is there somewhere behind this tab that something like that appears?

MR. ST. CLAIR. No, sir. The point I think we are trying to make is this: That the testimony of everyone who had anything to do with the settlement seems to make it quite clear that Mr. McLaren settled the case and that he alone settled it without any interference from anyone. Mr. Kleindienst approved it solely because Mr. McLaren recommended it. And maybe it has not been very artfully stated, but if that testimony is true, it would foreclose any evidence of interference from any third person.

MS. HOLTZMAN. Would the gentleman yield?

MR. SARBANES. Surely.

MR. MCCLORY. Mr. Chairman?

MR. EDWARDS. I believe Mr. Sarbanes has a couple of minutes and he has yielded to Ms. Holtzman, and then you.

MS. HOLTZMAN. I thank the gentleman for yielding, because I am puzzled by a statement that you bracket in 8f, page 139, where Senator Kennedy asked Judge McLaren: "So, you did not have any communication with anyone in the White House in any way about the *ITT* case?" And Judge McLaren says: "Not that I recall at this time."

And I seem to recall in the staff's presentation any number of memorandums that were ultimately transmitted to the White House, so if that is being used as the support for the statement of information, I, at least, would have to go back and check our information. But I think there were memorandums back and forth.

MR. ST. CLAIR. I would have to check that, too, but I believe if there was any such communication, it had to do with the decision to prosecute the appeal as distinguished from settling the case.

MS. HOLTZMAN. That may well be.

MR. ST. CLAIR. Judge McLaren further stated, when he said: "I don't recall at this time," he said: "I think I would recall if I had." I think the plain import of all of this testimony was that he and he alone with his staff settled these cases.

MR. MCCLORY. Mr. Chairman, for clarification I think I do understand Mr. St. Clair, but I would just like to be reassured of that. The White House did communicate with the Attorney General and there is no question about that as far as the question of appeal or trying to discourage the appeal is concerned? But insofar as the settlement is concerned, and I think this is what Judge McLaren was testifying about at the hearings in the Senate, he was not interfered with or there was no communication from the White House insofar as the negotiations or the events relating to the settlement of the *ITT* case?

MR. ST. CLAIR. We believe that to be factually true, sir.

MR. MCCLORY. Thank you.

MR. EDWARDS. Is it your testimony, Mr. St. Clair, that the Grinnell settlement was not a part of the *ITT* settlement? The Grinnell appeal was the subject of the telephone call by the President, is that not correct?

Mr. ST. CLAIR. Yes, I believe that is so, and the Grinnell was one of the cases that was settled. All three of them were settled; that is correct.

Mr. EDWARDS. But then how can you answer Mr. McClory that the *Grinnell* case was not a part of the settlement?

Mr. ST. CLAIR. I did not mean to indicate it was not a part of the settlement. I think it was part of the settlement. I think all of the cases were settled, but the President's call had no effect on that. The President's call related to whether or not an appeal should be entered with respect to an adverse decision in that case, and he left no—there was no uncertainty about his point of view regarding that issue.

Mr. McCLORY. And if I understand, the appeal was taken and—

Mr. ST. CLAIR. That is correct. The appeal was taken and the President changed his mind in the next day or so, and then they settled the case.

Mr. McCLORY. And they settled the case after the appeal was taken, while it was pending in the Supreme Court?

Mr. ST. CLAIR. Yes, sir; that is my understanding.

Mr. McCLORY. Thank you.

Mr. ST. CLAIR. The appeal was filed, in any event, or at least an extension was obtained, and I think eventually an appeal was filed and the case then settled.

Mr. EDWARDS. You may proceed, Mr. St. Clair.

Mr. ST. CLAIR. Thank you, Mr. Chairman. Tab 9.

Mr. McCAHILL. On July 23, 1971, the Republican National Committee selected San Diego as its selection site for the 1972 Republican National Convention. San Diego was the preferred site by William Timmons, who had investigated that city as a potential site, and the Attorney General's convention task force and was the highest regarded city for security purposes.

Mr. ST. CLAIR. In this tab, members of the committee, we have gathered together some documentation to give the committee some information regarding the considerations that went into a decision to select San Diego initially as the convention site, including a memorandum from Mr. Timmons to Mr. Haldeman, from Mr. Strachan to Mr. Haldeman and Mr. Magruder, and to the Attorney General and Mr. Haldeman and a memorandum from the Department of Justice, the Law Enforcement Assistance Administration, to Mr. Timmons. Whether or not San Diego was a good or bad city for a convention, I do not think is that relevant or material, but it did seem to us that the committee should be informed with respect to some of the considerations that the individuals had who had some responsibility in the matter expressed regarding the choice.

I do not believe there is anything that is remarkable in this that would justify particular mention on our part, but I think in substance it would show that consideration was being given to a number of factors, including the financing available, the security situation, and other relevant factors. Tab 10.

Mr. McCAHILL. In response to a question at the Senate select committee concerning Dita Beard's disappearance on the eve of the Kleindienst hearings, E. Howard Hunt stated that he was not aware of

any role Gordon Liddy played in Mrs. Dita Beard's departure from Washington.

Mr. ST. CLAIR. This is really somewhat out of context, but there has been reference to Mr. Liddy having spirited Mrs. Beard out of Washington. Mr. Hunt's testimony would seem to undercut that information. Tab 11.

Mr. McCaHILL. On June 22, 1974, the New York Times, page 15, carried a story in which Representative Bob Wilson, Republican of California, said the Special Prosecutor informed him that no legal action was being considered against him in relation to the ITT matter.

Mr. ST. CLAIR. I think this matter is self-explanatory. Tab 12.

Mr. McCaHILL. On April 4, 1972, the President met with H. R. Haldeman and Attorney General Mitchell in the Oval Office from 4:13 to 4:50 p.m., during which time the ITT matter was mentioned.

Mr. ST. CLAIR. This is that same transcript to which earlier reference was made, and it is included here for the materials that relate to the ITT discussion. And we have marked portions of the memorandum as they relate to ITT. And I would direct your attention first to page 6, where Mr. Mitchell, Mr. Haldeman, and the President are discussing the ITT-Sheraton business. And there are comments about the poor job that was done by the people that went out there to look, that the costs were going to be high, between \$2.4 and \$2.5 million to put the thing together. "And that is just if we get the Convention Hall, apparently," comments Mr. Haldeman. And Mr. Mitchell says: "No, no, this is the whole thing."

Mr. Mitchell further down the page makes the comment that "We were at fault in not recognizing the limitations of these facilities." And Mr. Mitchell further states that "There is a labor contract coming up on June 1 out there for negotiation," and that might have some serious effect on the convention, and so forth.

The general discussion relating to this subject matter is again continued on page 8. The President said that he is not going to stay there, any place in San Diego, without regard to whether or not there was an understanding that the Sheraton would be the President's headquarters. The President says, "I am going to stay in San Clemente."

The rest of the transcript goes on in substantially the same vein.

I do not think it is unfair of me to suggest that at no point is there any suggestion that the Sheraton contribution to the city of San Diego had anything whatsoever to do with the settlement of the lawsuit.

Ms. HOLTZMAN. Mr. Chairman?

Mr. EDWARDS. Ms. Holtzman.

Ms. HOLTZMAN. I wonder, Mr. St. Clair, if you could explain the notation on the bottom of page 4: "Material unrelated to Presidential actions deleted"?

Mr. ST. CLAIR. That is a personal reference to a Member of Congress, which I have described to Mr. Doar, and I do not think has anything whatsoever to do with this.

Ms. HOLTZMAN. Thank you.

Mr. EDWARDS. The vote is on the Steiger of Wisconsin amendment, as amended by the Michel amendment, to take additional money from OSHA to be taken from appropriated funds, and the bill for onsite



consultations services. I believe that when we go, we are not coming back. Move along, Mr. St. Clair.

Mr. ST. CLAIR. Maybe I can shortcut this by giving you what we believe the intent of these are. The gist of our presentation at this point has to do with Mr. Kleindienst's statement and his testimony before the committee. And if you look at tab 13b, I think it is fair to describe his statement that when he said that he had not had any interference from the White House, it was in the context of the settlement of the *ITT* cases as they related to the payment of the Sheraton Corp. to the city of San Diego of some \$200,000 or \$300,000, and that in that context his testimony was true and correct, that at no time did you receive any interference from the White House regarding the settlement of the cases.

Of course, he concedes that he did receive instructions from the President with respect to the prosecution of the appeal. That is the sum and substance of this whole section.

And finally, a bit of self-serving information as to the last paragraph, indicating during this period of time the President was engaged for substantial periods of time on affairs with the People's Republic of China and a visit to Moscow.

Mr. EDWARDS. That completes book 2.

Mr. Rodino, it was your wish that we recess until tomorrow morning at 10 o'clock?

The CHAIRMAN. Yes.

[Whereupon, at 5:08 p.m., the committee was recessed, to reconvene at 10 a.m. on Friday, June 28, 1974.]



# IMPEACHMENT INQUIRY

## Executive Session

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FRIDAY, JUNE 28, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:17 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Fred H. Altshuler, counsel; Evan A. Davis, counsel; Richard H. Gill, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel; and Malcolm J. Howard, assistant special counsel.

The CHAIRMAN. The committee will come to order. And we resume where we had recessed last night. At that time I believe Mr. St. Clair had concluded with the presentation of the second volume. Mr. St. Clair.

Mr. ST. CLAIR. Thank you, Mr. Chairman.

I would like to, if I may, Mr. Chairman, make one brief comment regarding the very end of yesterday's presentation. Due to the quorum call, I merely summarized the intendment of our presentation, and I would like to, if I may, just add one further thought to that summarization. And that is we included in our presentation what we feel were representative press clippings of the events with respect to the Kleindienst nomination hearings, which clearly indicate that the subject matter being reported in the press was allegations of a connection between the settlement of the antitrust cases and the contribution of the Sheridan-ITT Corp. to San Diego, the city of San Diego Convention Fund, or whatever it was called. So that the press reporting was in the context of whatever relationship of whatever there was between that contribution and the settlement of the case.



Thank you. If I may then, Mr. Chairman?

The CHAIRMAN. Please proceed.

Mr. ST. CLAIR. Referring now to book 3, this book deals entirely with the dairy investigation. Tab. 1.

Mr. McCAHILL. The President was invited to address the Associated Milk Producers, Inc.—AMPI—annual convention in Chicago in September of 1970. The President was unable to accept the invitation, and Secretary Hardin spoke in his place.

The President placed a courtesy phone call on September 4, 1970, to the general manager of AMPI, Mr. Harold Nelson. He also spoke with Secretary Hardin who was with Mr. Nelson. During that conversation the President invited the dairy leaders to meet with him in Washington and to arrange a meeting with dairy leaders at a later date.

Mr. ST. CLAIR. The tabs in support of this is a memorandum retyped from an illegible copy to Bryce N. Harlow from Under Secretary Campbell. The significance I think that I would like to call to the attention of the committee is the date at which initial discussions about the President's talking with or meeting with dairy people began, and that is certainly by June 29, 1970, which is the day of the first memorandum, tab 1a.

Tab 1b is further evidence or information rather, relating to contacts with the administration and leaders of the dairy industry on the subject of a meeting with the President. And in Mr. Hardin's memorandum of January, I think it is the 25th or 26th of 1971, reference is made to a phone call by the President to Secretary Hardin and Mr. Harold Nelson, president of AMPI, extending an invitation to Mr. Nelson and other leaders to meet with the President in the White House. Again, the date now is January 1971.

Tab c is a portion of the deposition of Mr. Nelson relating to the same subject matter of the telephone call he had with the President. He describes the substance of that call at the bottom of page 61 and running over to the top of page 62 in his deposition, relating to the fact that the President told Mr. Nelson as follows:

"Also that he wanted to meet with us. No specific time was set. And that he would discuss such a meeting with Secretary Hardin. And he asked, and he asked me to tell the convention. He regretted being unable to attend and," the sentiments as he just described as being concerned about agricultural affairs and the like. Again, this relates to events as early as January 1971. Tab 2.

Mr. McCAHILL. Harold S. Nelson and his special assistant, David L. Parr, paid a brief courtesy call on the President on September 9, 1970, during a Presidential "Open Hour." During the Open Hour of September 9, 25 other people in addition to the AMPI representatives visited the President, including a group to encourage servicemen to exercise their votes, a group of concerned citizens from the State of South Dakota, and a contingent of the Gold Star Mothers. Mr. Nelson's and Mr. Parr's pictures were taken, and the President told them he understood they had had a successful annual meeting, and that he would like to attend their next one in 1971. They had what Mr. Parr described as a "very light veined" discussion of their orga-

nization and activities. There is no evidence that campaign contributions were discussed.

Mr. ST. CLAIR. In this tab, Mr. Chairman, members of the committee, again attention is directed to the date of the call, that being September 9, 1970.

Tab a, for purposes of context, is repeated here, although I believe it was presented by the special staff in its presentation.

Tab b is a portion of testimony in executive session in the Senate select committee which Mr. Parr describes: "The first thing we did was to get a picture taken with him," and indicates that Mr. Colson was not part of the picture.

Then he said: "The second thing that happened, he," I take it being the President, "got on his yellow cabinet." Which I don't understand. It must be a garble in translation, and I think it is really a tablet, yellow tablet, "and we all sat down and he said, you people must have real good organization. I have heard some very good things about it. I know you have tried every way in the world to get me to come, and I understand you had a successful meeting. And when is your next one? I want to be there. I believe was the right word."

And then Mr. Parr says:

I believe we told him our next one would of course be 1971, and that we did not really want him to come. Then he said, well, I do not understand that. We said we want you to come in 1972, and we will have it in Los Angeles, and we will have it in the coliseum, and we will have 100,000 people. And if you don't come we'll get the Democrat. And when he said, no, I want to come in 1971. Now, we were sort of joshing with him then.

And then later on Mr. Parr says:

Well, I think we were there about 15 or 20 minutes. We tried to give him a bird's eye view of the cooperative, of what milk was, and I just do not remember all of the discussion we had. In other words, it was a very light veined type of discussion. It was the first time we had ever seen him, the first time I had ever seen him.

This is on page 17 of tab 2b.

Our marking is in the right-hand column. The special staff marking is in the left-hand side of the page. Tab 2c—

Ms. HOLTZMAN. Mr. Chairman?

Mr. ST. CLAIR [continuing]. Is further testimony respecting this meeting, and I would suggest we commence at the bottom of page 53. I think it would be best to include in the marking the question that precedes the first answer at the bottom. The question was:

So you and Mr. Nelson flew to Washington to meet with the President, and now when you met with the President at that time, did you discuss anything else besides the question of his setting up a meeting?

Answer: I just remember he got out his yellow pad and started saying, "When is that meeting?" I was impressed with that.

Then he was asked: "How long did the meeting last?"

And he said: "I do not remember." And he says he was asked: "You don't remember what other subjects were discussed?"

And his answer was:

The only thing that impressed me was that he was very complimentary of what he had heard about our annual meeting. That is what we had just had. And he expressed an interest in meeting some of our people, which we thought was good,

and it sounded like he wanted to come to our next meeting, which he ultimately did.

Question: Was that the only thing that you talked about with the President about at that time?

Answer: I am sure we talked to him about the plight of the dairy farmer, because we never missed an opportunity to talk to anybody about that. But, I don't remember anything specifically.

Then finally in 2d, a portion of the testimony of Mr. Harold Nelson, and this relates to the conversation on the telephone, his description of the subject matter, and the question about halfway down on page 61 is:

What was the substance of that telephone—

Answer: He was expressing his regret at being unable to attend, expressing his awareness of the importance of agriculture to the economy of the United States, and to the health and well-being and that sort of thing.

And he goes on to repeat that the President expressed concern about the wellbeing of agriculture producers, and he wanted to meet with members, that no specific time was set, and that the President wanted to express his regrets at being unable to attend.

The CHAIRMAN. Mr. St. Clair?

Mr. ST. CLAIR. Yes, sir.

The CHAIRMAN. Might I ask, this is just to make reference to what was called to our attention yesterday. In your reading the statement of Mr. Nelson as to his conversation with the President, I do not know how important this is except to point out the accuracy of your statement of information. You describe it in tab 1 as a courtesy phone call, and then we get language which, in my judgment, of course, while you may call it a courtesy phone call, is a phone call which talks about reinsurance and talks about awareness and concern for the well-being of agricultural producers. Now, I do not question the fact that that may not have any significance. I question the description that you place in concluding that this was such a courtesy phone call. Would it not be more appropriate that it was a phone call, and then allude to the information?

Mr. ST. CLAIR. Well, Mr. Chairman, certainly you and the members of the committee are entitled to draw any inferences you want. We felt this was a fair description of it. It may not—you may not agree, and if you do not agree, of course, you will ignore it. If you don't agree, I suggest simply you ignore the suggestion.

The CHAIRMAN. No, I think that what I am trying to say, Mr. St. Clair, is that you are not presenting detailed information, but you are drawing conclusions because you are describing, in my judgment, and as I say I am not going to belabor it, but this crops up in various instances, and I do not know if this is the way you want to present it, by having such conclusions that in my judgment, at least, may not be quite the thing that one would expect of a detailed informational presentation.

Mr. ST. CLAIR. Well, it is conclusory in a subordinate sense, of course. And I do not want to belabor the point either, except I would think it would be almost impossible to avoid making a subordinate conclusion from time to time. I do not think that is a critical description, and I would be just as happy to have the committee disregard it. We are simply trying to portray what is an accurate picture supported by the facts, and if this is not so, then the jury is not persuaded on this point. That is all.



The CHAIRMAN. Well——

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. A question of clarification, Mr. St. Clair. I refer your attention to page 3 of tab 2a and the handwriting underneath the reference to a meeting with Mr. Nelson et al, and there is an asterisk, and some language which says, "See separate," and there is a word that is not completed, "paper from Colson especially," and I believe the word is contribution. Have you attached that?

Mr. ST. CLAIR. No; I believe this entire documentation I think is in the presentation of the special staff. If I am wrong in that respect, I would be glad to submit it to the committee. We will check with them during a recess.

Ms. HOLTZMAN. Thank you.

Mr. ST. CLAIR. As I said, I only put this in for context as to fixing the time and the circumstances of this meeting, who else was also being pictured that day and the like.

If I may proceed then, Mr. Chairman?

The CHAIRMAN. Please proceed.

Mr. ST. CLAIR. Tab 2d, we just reviewed that portion of Mr. Nelson's testimony that related to the phone call. Now, on page 63 Mr. Nelson gives his memory with respect to the meeting and his description is somewhat different in context, but in substance, he confirms that it was a sort of a very light meeting. For example, he says just at line 11, he says he, the President:

Once again talked about how he regretted that he couldn't attend the meeting. We talked to him about and invited him to address the next meeting—the next annual meeting, which he did.

Question: And that was the entire——

Answer: This was a very brief meeting. I remember he kidded Dave Parr about his build as a former Tennessee football player, and, you know, talked about his interest in sports and that sort of thing. That seems to me that the main point of discussion at that time was we would like for him to attend our next—speak at our next annual meeting.

Question: And was there any discussion at that time of a meeting that would turn out to be the March meeting?

Answer: I don't have an independent recollection, but I would say it would be unusual if we didn't seize that opportunity to tell him that we'd like, at his convenience, to have some dairy leaders in to talk with him.

Tab 3.

Mr. McCAHILL. Harold S. Nelson and David L. Parr have testified that the figures of \$1 million and \$2 million were tossed around, not that any specific pledge was made. Mr. Parr testified that the figures were used in a jesting manner.

Mr. ST. CLAIR. Tab 3 is testimony——

Mr. FISH. Mr. Chairman, a point of clarification.

The CHAIRMAN. Mr. Fish.

Mr. FISH. Is counsel reading from the tab 3 which was in the envelope from the White House, or volume 3 instead of tab 3 which was in the book?

Mr. McCAHILL. Yes, Mr. Fish. Pardon me. Tab 3 which was in your book should be replaced by the one that is in the envelope.

Mr. FISH. Is that true of other things in the envelope, tab 1a, 4, 5a, and 13?

Mr. McCaHILL. Yes. There were some typographical errors and we corrected them.

Mr. FISH. Thank you very much.

Mr. ST. CLAIR. Tab 3a is portions of the testimony before the Senate select committee by Mr. Nelson. And on page 82 he was asked by Mr. Weitz: "When you say \$2 million or more was discussed at various times, who discussed it? Did you discuss it with some individuals or did you, Mr. Nelson?"

"Answer: There would just be amounts that would be thrown out about—" and Mr. Weitz interrupts: "Yes, did you hear those amounts discussed or did you yourself discuss those amounts?"

And Mr. Nelson said: "Ordinarily I would not be the one to mention these amounts."

And Mr. Weitz said: "Who did?"

"Answer: Mr. Parr.

"Question: In your presence?"

"Answer: He has mentioned those amounts in my presence, yes."

Now, turning to 3b, we have portions of testimony before the Senate select committee again, and now by Mr. Parr, and I think we should probably start at the bottom of page 205. Mr. Parr said: "I just remember a discussion of about a million, and then somebody said two million, and that—" and Mr. Sanders then interrupted and said: "Would the first time that that occurred have been in Mr. Colson's office?"

"Answer: Do you mean discussions of that type of nature?"

"Question: Yes.

"Answer: I just don't know."

Now, continuing down on that portion of page 206 marked in the right hand column, we would call the committee's attention to Mr. Parr's statement.

"In relation to this 1 million and 2 million, I recall that it was said, discussed, and as I recall, it was sort of in a jesting manner. That is the best recollection I can have.

"I have testified that one was mentioned, and then I believe Mr. Colson said this is a \$2 million package or some words like that." Tab 4.

Mr. DENNIS. Mr. Chairman, I would like to ask Mr. St. Clair, I realize this is partial testimony, but what occasion is this referring to, and who is there besides the milk people, if you can tell us? Who were they talking with or to?

Mr. ST. CLAIR. Well, Mr. Colson is present, Mr. Parr and Mr. Nelson is present, and the President is not present.

Mr. DENNIS. And when was this approximately?

Mr. ST. CLAIR. I wonder, sir, if I could inform you on that later. I do not have that.

Mr. DENNIS. Sure. That is perfectly all right. I would just sort of like to know when, and where, and who's involved, and it might have a little more significance.

Mr. ST. CLAIR. I will be happy to.

Mr. EDWARDS. Mr. Chairman, may I ask Mr. St. Clair a question?

Mr. DONOHUE [presiding]. Mr. Edwards.

Mr. EDWARDS. Mr. St. Clair, in the statement, wouldn't it have been more accurate to say Mr. Parr testified that the figures were used in

a jesting manner, Mr. Parr stated that Mr. Colson said this is a \$2 million package and some words like that? I am curious why you left that out.

Mr. ST. CLAIR. Well, I think it would be proper to include it. At the time this was prepared, we concentrated on the description Mr. Parr made of sort of a jesting manner. I think you are quite right, that it probably would be better to have included it. It certainly is, that material is in the supporting tab which is available to the committee, but I would be inclined to agree with you, Mr. Edwards.

Mr. WALDIE. Mr. Chairman?

Mr. DONOHUE. Mr. Waldie.

Mr. WALDIE. Mr. St. Clair, on tab 3a on page 82, there is something that I do not understand there. Mr. Nelson is responding to Mr. Weitz, and he said, "Well, we did not tell him any specific amount. At various times \$1 million or \$2 million or even more money was discussed. And had they given us the names of the committees they could have gotten much more money from us."

Who does he refer to with the use of the pronoun "they," and "had they given us the names of the committees they could have gotten much more money from us?" Who is "us," and what in the world are the names of the committees? I don't understand that reference.

Mr. ST. CLAIR. I think, Congressman Waldie, that "they" refers to representatives of the Committee to Reelect, or at that time the Republican National Committee, some political organization. And it is my understanding of the situation that mechanically contributions had to be made to committees, and that at this time apparently the Republican organization did not have available the names of the committees to whom the dairy people could, in fact, contribute money.

Mr. WALDIE. That would be the \$3,000 problem?

Mr. ST. CLAIR. I do not know what the amount is, but that sort of thing, according to my understanding. And apparently Mr. Nelson felt at that time, if they had had more names of more committees they could have, in fact, given more money. And I think the distinction should be drawn about how much, in fact, was given as of that time, as against how much was being contemplated to be given in the future.

Mr. WALDIE. So you understood Mr. Nelson to be saying, or do you understand he is saying they could have gotten much more money, and he is relating to much more than a million or two million?

Mr. ST. CLAIR. I think, Sir, that at this point they were talking about how much had been given, and my memory is \$50,000, and the million or the two million was prospective as to how much they would pledge in the future. But, my memory of the special presentation is that there was a mechanical problem early in these relationships that this is reflective of.

Mr. WALDIE. Thank you.

Mr. RANGEL. Mr. Chairman?

Mr. DONOHUE. Mr. Danielson.

Mr. DANIELSON. I have a question of clarification at the same point, page 82 under tab 3a, Mr. St. Clair. Would Mr. St. Clair tell us, the first line refers to several hundred committees as a question, and does counsel have available to him the preceding pages, 81 or 80, which would indicate from whom this list of committees was obtained and how many there were?



Mr. ST. CLAIR. Either we do or the special staff does, and I will consult with them and with my staff to see which one of us has it, and I will be glad to submit it.

Mr. DANIELSON. I would appreciate that to give me a little bit better context. Thank you.

Mr. ST. CLAIR. You will observe, sir, this is in a sense repetitive of materials that the special staff presented. We wanted to emphasize one portion of that, but I think it is quite appropriate that you have previous pages if they are available.

Mr. DONOHUE. Mr. Rangel.

Mr. RANGEL. Mr. Chairman, a quick review of tab No. 3 would allow the reader to believe that the one and two million was tossed around, were figures that were just used in a jesting manner by all of the parties that are mentioned in the preceding sentence. Now, Mr. Edwards pointed out in Mr. Colson's statement that it is clear that he was not joking, and Mr. Waldie pointed out Mr. Nelson's testimony, and it is clear that there is nothing to indicate that he was joking, especially as it relates to even more money was discussed and more could be available. Would you agree that this tab does not logically follow that, that there is a strong inference that this last sentence Mr. Parr testified that the figures were used in a jesting manner, reflects all of the people that are mentioned in tab 3?

Mr. ST. CLAIR. Well, in my view, Sir, if I may respond, that is his testimony being descriptive of a meeting at which he was in attendance. It is for you to give such weight to it as you think appropriate.

Mr. DONOHUE. Mr. Sarbanes.

Mr. SARBANES. Mr. St. Clair, on this tab 3, I understand that it has been replaced in the language, and that "AMPI officials and in conversation with fund raisers," that was in the earlier tab is stricken?

Mr. ST. CLAIR. That is right. I am informed by my associates that the material we had would not necessarily support the reference to AMPI and, therefore, we changed it.

Mr. SARBANES. And could we have another copy? We will need another copy to include in here.

Mr. ST. CLAIR. Did we not make the change there?

Mr. SARBANES. Not in mine, at least.

Mr. ST. CLAIR. All right. We will have to make that change. I thank you for calling that to my attention.

Mr. SEIBERLING. Mr. Chairman?

Mr. DONOHUE. Mr. Seiberling.

Mr. SEIBERLING. I wonder if Mr. St. Clair could give us the reference to tab 3B, the page that follows page 206, because at the bottom of page 206 Mr. Parr says, "We were constantly discussing what we expected," and there the page ends in the middle of the sentence and it seems to me in order to have it complete, a complete picture as to what he was saying, we ought to have the following page.

Mr. ST. CLAIR. Mr. Seiberling, if I may, this is a portion that was presented by the special staff. We sought to call attention to a special portion of it, and I would be glad to consult with them to see if they have the next page, or see if we have in our files the next page.

Mr. SEIBERLING. Well, I think in order to be able to study your presentation completely, it would be helpful.

Mr. ST. CLAIR. You see, this is executive testimony before the Senate committee, and I think our source is your staff, and I will see if I can persuade them to add the next page.

Mr. SEIBERLING. I think it might be helpful.

Mr. ST. CLAIR. If I may, then, Mr. Chairman, tab 4.

Mr. DONOHUE. You may proceed.

Mr. McCAHILL. On March 5, 1970, Secretary of Agriculture Hardin requested the President to direct the Tariff Commission to investigate and report on the necessity for import controls on four new dairy products which had been developed to evade import controls previously established on recognized articles of commerce. The Tariff Commission, by report 338, found unanimously that the imports of the four products were interfering with the dairy price program and recommended zero quotas for three of the items, and an annual quota of 100,000 pounds for the fourth.

Mr. ST. CLAIR. I think I should comment when we are talking about the quotas, these are import quotas, so that a zero import quota would be the equivalent of no imports.

And the first tab is a copy of a letter from Secretary Hardin to the President calling attention to the conditions that related to the products listed at the end of the first paragraph; namely, ice cream, chocolate crumb with a fat content of 5.5 percent or less, animal feeds containing milk or milk derivatives and certain cheese containing 0.05 percent or less by weight of butterfat.

The second tab, 4b is retyped from an indistinct original. It is a press release of October 6, 1970, of the U.S. Tariff Commission. And we have designated for your specific attention the second paragraph containing a recommendation that the import quotas of zero for ice cream, certain chocolate and articles containing chocolate, and certain animal feeds, and with respect to certain cheeses, the Commission recommended an absolute quota of 100,000 pounds for each year after 1970.

That is all of the tabs on that. Tab 5.

Mr. McCAHILL. On October 19, 1970, Secretary Hardin recommended that the Tariff Commission's recommendations be implemented. The Task Force on Agriculture Trade of the Council of Economic Advisers disagreed with Secretary Hardin and unanimously recommended to the President, on November 7, 1970, that imports of these items should not be cut off. Thus, CEA did not forward Secretary Hardin's recommendation to the President. On November 30, 1970, Secretary Hardin, in a memo to Bryce N. Harlow, Assistant to the President, again pushed for a zero quota on one of the items.

Mr. ST. CLAIR. The first tab, tab 5a, is, I am afraid, somewhat indistinct, but I hope a legible memorandum to Mr. Paul McCracken, Chairman of the Council of Economic Advisers, in effect forwarding an attached letter addressed to the President, urging that the President accept the recommendations of the Tariff Commission. And the next attached to that is the letter from Secretary Hardin to the President under date of October 19, 1970, which is a retyped copy. And the first paragraph we have indicated for your special attention. In substance Secretary Hardin states "the failure to follow the Commission's recommendations can only strengthen the hands of the critics who

charge that the administration is unwilling to carry out the intent of Congress in enacting section 22," and he urges that they accept the Tariff Commission recommendations and issue a proclamation to give them effect as soon as possible.

Then the next item is a memorandum for Mr. Paarlberg, Director of Agricultural Economics on the subject of import quotas and that is under date of November 9, 1970, and it is from the Council of Economic Advisers and it states in substance as you can read "the Task Force on Agricultural Trade has made a unanimous recommendation on dairy imports to the President. In view of this, there is presumably no longer any need to forward the letter of Secretary Hardin to the President which you sent to Paul McCracken on October 19."

And then he suggests maybe the letter ought to be returned.

MR. WALDIE. Mr. Chairman, may I ask a question please? Mr. Chairman?

MR. DONOHUE. Mr. Waldie.

MR. WALDIE. Mr. St. Clair, just for my clarification, the letter from the Council of Economic Advisers is dated November 9 and there is reference to a letter from Secretary Hardin to the President which was sent to Paul McCracken on October 19 and that letter is dated October 19, addressed to the President.

Now, is that a normal transaction, a letter addressed to the President, one, never gets to him and I gather it is sent back to the person who wrote it, as I understand this matter, or two, if it ever got to him it would have gotten to him after October 19, almost a month after it was written? Is that the way things work?

MR. ST. CLAIR. Congressman Waldie, I was not connected with the administration at that time. However, I do observe from my being immersed in the documentation of this case that many things are addressed to the President but very few actually are received and read by him.

One of the statements which we will deal with a little bit later refers to that very subject matter, a lawyer representing one of the dairy groups addressing a letter to the President and he said of course, he never expected the President would see it.

MR. WALDIE. Yes, I saw that. That is Mr. Hillings' letter.

MR. ST. CLAIR. Hillings' letter, yes. And my feeling for the situation is many things were addressed to the President but few actually got there.

MR. WALDIE. Is it your understanding that this letter never got to the President?

MR. ST. CLAIR. That would be my understanding of it, yes.

MR. WALDIE. Thank you.

MR. DONOHUE. You may proceed, Mr. St. Clair.

MR. ST. CLAIR. Thank you, Mr. Chairman.

The final document here under date of November 30, 1970, is a memorandum to Bryce Harlow, assistant to the President. And I think again Secretary Hardin was trying to persuade the administration to be, as he said in the next to last paragraph, "I believe we should be very tough on this item and hold to a zero quota." Tab 6.

MR. MCCAHILL. On December 16, 1970, Patrick J. Hillings, of the Washington, D.C., law firm of Reeves & Harrison, gave Roger John-



son a letter addressed to the President. It requested on behalf of AMPI that the Tariff Commission's recommendation of strict import restrictions be adopted. The letters referred to the contributions to Republican candidates in the 1970 congressional election and to plans to contribute \$2 million to the reelection campaign.

Attached to the letter was an extensive economic and political analysis of the dairy import quotas. Roger Johnson referred the matter to H. R. Haldeman. An undated memorandum from John Brown referred it to "J. C." who was to check with Ehrlichman and Colson regarding whether the letter should be sent to the President.

The letter ended up in Charles Colson's safe and Colson criticized Hillings for sending such a letter. Hillings had not intended or expected that the President see it in the first place and does not believe that the President did see it. There is no evidence that the President ever saw it.

Mr. ST. CLAIR. Now, this tab, I do not think we are in a position to identify who "J. C." is, other than perhaps the obvious.

Mr. SARBANES. Who is John Brown?

Mr. ST. CLAIR. Well, he was on the White House staff in some deputy position. I am not sure exactly what his position was.

The second document is a memorandum from Mr. Johnson to Mr. Haldeman reciting that Hillings had handed to him the attached letter and asked that it be directed to the President and it says "It concerns that matter which both Peter Flanigan and Chuck Colson are familiar and on which they are working."

Then there is the letter itself, and the letter is addressed to the President and it is dated December 16. And in the letter he talks about his representation of AMPI. He makes reference to the meeting in the White House in September of 1970 when the President met with two of the key leaders, Mr. Nelson and Mr. Parr and makes reference to the telephone call relating to the annual convention in Chicago and the President's intent to address the next annual convention.

Then he states—

Mr. WALDIE. I am sorry to interrupt you but I am trying to follow it as you give it and in the tab that memo from J. C. is so poorly reproduced that I cannot read it.

Mr. ST. CLAIR. Well, sir, I have no difficulty with it. But, as I read it, "Would you check with" and that would be Ehrlichman—"and Colson on whether this should go"—and I suppose that is "in"—"and if so in what fashion"

Mr. WALDIE. And your conclusion on the tab is that that memorandum states in substance it was a memorandum from John Brown referring to J. C. who was to check with Ehrlichman and Colson regarding whether the letter should be sent to the President? Is that your conclusion of that tab?

Mr. ST. CLAIR. All right.

Mr. WALDIE. All right.

Mr. ST. CLAIR. And I read the "go in" I believe that to mean go into the President.

Mr. DRINAN. Mr. Chairman?

Mr. ST. CLAIR. I agree that it is very indistinct.

Mr. WALDIE. Yes; it is a difficult one to follow.

Mr. DRINAN. Mr. St. Clair, a point of clarification. On the left hand bottom of that statement it says "Dean, 11/29/73." Is there any significance to that? Did John Dean see it or transmit it or what?

Mr. ST. CLAIR. Father Drinan, I really do not know.

Mr. DRINAN. Thank you.

Mr. DENNIS. Mr. Chairman?

Mr. DONOHUE. Mr. Dennis.

Mr. DENNIS. There is a statement in the Hillings letter, 6a, and I notice at the bottom of the first page of the letter and the top of the second page he says, "The problem is this. The dairy industry cannot understand why these recommendations were not implemented very quickly. The longest the Democrats ever took to implement a Tariff Commission recommendation was 16 days. On one occasion, President Johnson even imposed quotas before he received the Tariff Commission's recommendations."

I can see why the administration was in trouble.

Mr. RAILSBACK. Mr. Chairman? Mr. Chairman?

Mr. DONOHUE. Mr. Railsback.

Mr. RAILSBACK. Just a point of information. I wonder if the J. C. in the memo would not be J. Campbell, who is apparently the top man in the Domestic Council that worked under Ehrlichman?

Mr. ST. CLAIR. It might well be, sir. I am just not able to positively identify.

Continuing with this letter—

Mr. WALDIE. To go back to that question that I was trying to find out as to if the President sees material addressed to him, I presume this is the major point of this John Brown memo, that this letter of Hillings never got to the President and I guess that is a fairly key item of evidence. Do I understand that the John Brown memo to J. C. was attached to the Hillings' letter? I see the memo from Johnson to Haldeman was attached to the Hillings' letter but why do you conclude the J. C. memo even dealt with the Hillings letter?

Mr. ST. CLAIR. Because, sir, in our files they were all together.

Mr. WALDIE. Well, where do I find that in your evidentiary presentation? Is that your conclusion that this memo deals with the Hillings' letter?

Mr. ST. CLAIR. Yes, because of the way it was found in our files.

Mr. WALDIE. How was it found in your files?

Mr. ST. CLAIR. I don't now remember whether they were clipped or whether—

Mr. WALDIE. Clipped to the Hillings' letter?

Mr. ST. CLAIR. Or stapled. My only memory is that these were in our files in a condition that led us to a conclusion that they were related.

Mr. WALDIE. Well, now, is that evidentiary testimony of yours? Did you find these in the file?

Mr. ST. CLAIR. I don't recall whether I did, sir, or not, frankly. I did review a number of files of course but I cannot identify this as to whether I did or not.

Mr. WALDIE. Well, is that the only connection of the J. C.—John Brown memo to the Hillings' letter, that it was found in a file by someone and you are not sure who?

Mr. ST. CLAIR. I think that is an accurate statement but I do not know that the inference I would agree with, sir.

Mr. McCLORY. Would the gentleman yield along the same lines? I am wondering if the mark "Dean, 11/29/73" which is a relatively current date would that help to indicate there was some testimony someplace else?

Mr. ST. CLAIR. I do not know of any other testimony, Congressman McClory. Now that you mention that—

Mr. McCLORY. It looks as though it might have been used in connection with some Dean testimony someplace else.

Mr. ST. CLAIR. I don't know of any such testimony.

Mr. WALDIE. So, as far as we know, the chain as to whether it got to the President ends with the memo from Johnson to Haldeman saying Pat Hillings wanted to have it directed to the President and Johnson gives it to Haldeman to give to the President. Is there any testimony from Haldeman that he did not give it to the President?

Mr. ST. CLAIR. No, I think not, sir.

Mr. WALDIE. So, as far as we know, the chain as to whether it got to the President ends with the memo from Johnson to Haldeman asking Haldeman to give it to the President?

Mr. ST. CLAIR. No, I think not, sir.

Mr. WALDIE. Where does it end beyond that?

Mr. ST. CLAIR. There is testimony in depositions in further tabs in this section.

Mr. WALDIE. By Hillings who said he didn't think it ever got there.

Mr. ST. CLAIR. By Hillings in his discussions with Mr. Colson.

Mr. WALDIE. Is there anything from Mr. Haldeman?

Mr. ST. CLAIR. Not that I am aware of, sir.

Mr. WALDIE. Mr. Haldeman was the last one that you knew of to have that Hillings' letter in his hand?

Mr. ST. CLAIR. No, sir. I think Mr. Colson was. I think it was actually found in Mr. Colson's safe.

Mr. COHEN. Mr. Chairman, may I inquire?

Mr. DONOHUE. Mr. Cohen.

Mr. COHEN. Just following along the line of Mr. Waldie, I think it would be important to note for our record that according to our committee staff of this committee's investigation on a tab listed as No. 13 it indicates that by memo dated December 18, 1970, Mr. Colson complained to Murray Chotiner regarding the behavior of the AMPI lawyers, Harrison and Hillings, so it was 1 day after that memo was sent.

Mr. ST. CLAIR. Thank you.

Mr. DONOHUE. Please continue.

Mr. ST. CLAIR. Later in this tab it appears Mr. Colson is highly critical of Mr. Hillings, sending this letter and it may well be that the other tab which you made reference to is a part of why Mr. Colson was disturbed with Mr. Hillings.

If I may then continue, Mr. Chairman?

Mr. DONOHUE. Please continue.

Mr. ST. CLAIR. The letter, as pointed out in the third paragraph, Mr. Hillings makes reference to the fact that his client follows his advice explicitly and will continue to do so, that they have contributed about



\$135,000 to Republican candidates in the 1970 election. "We are now working with Tom Evans and Herb Kalmbach in setting up appropriate channels for AMPI to contribute \$2 million for your reelection. AMPI also is funding a special project."

Then he makes reference to the September 21 Tariff Commission recommendation and he complains a little bit about the slowness with which the Republican administration acts in comparison with previous administration actions on similar matters, and so forth and so on.

And he attaches, in substance, a brief with an economic study in support of the dairy industry views regarding the tariff quotas.

The next tab then is 6b, Mr. Hillings' deposition.

Ms. HOLTZMAN. Mr. St. Clair, just a clarification of the last sentence of tab 6.

When you say there is no evidence that the President ever saw it, the word "evidence" there, does that refer to evidence adduced in any deposition or before any congressional committee or is it a statement based on either your conversations with the President and the search of the files of the White House?

Mr. ST. CLAIR. Well, we have examined all of the files—let me say this, the Department of Agriculture sent over several boxes of files to us at the request of your special staff. We made copies of those and retained them for our records and sent the boxes over to the special staff. Our file search in the White House turns up nothing that would contradict this. I think the word "evidence" should be used in the context of this inquiry as information. I think that is just lawyers' talk.

Ms. HOLTZMAN. Thank you.

Mr. DANIELSON. Mr. Chairman?

Mr. DONOHUE. Mr. Danielson.

Mr. DANIELSON. May I inquire of President's counsel whether the President has ever indicated whether he saw Mr. Hillings' letter?

Mr. ST. CLAIR. I could answer that but I think it would be inappropriate.

Mr. DENNIS. Mr. Chairman, I think that is a most inappropriate question to start asking counsel.

Mr. DANIELSON. I think it is most appropriate and I have not yielded to Mr. Dennis or anyone else.

Mr. DENNIS. I object.

Mr. DANIELSON. I do not choose to until I have completed my statement, and I feel it is most appropriate, most relevant, and most material. Now, counsel need not answer it if he chooses not to, but the question is very pertinent whether the President's counsel knows if the President has acknowledged receiving Mr. Hillings' letter.

Mr. DENNIS. Mr. Chairman, may I be recognized for a moment?

Mr. DANIELSON. I yield back the balance of my time.

Mr. DONOHUE. You may continue, Mr. St. Clair.

Mr. MEZVINSKY. Is he going to answer that?

Mr. ST. CLAIR. Continuing with the deposition of Mr. Hillings, particularly on page 38 thereof, he testifies:

The letter was prepared by Mr. Martin Harrison and me and was based on the fact that the Tariff Commission had unanimously recommended favorable action for milk farmers on restriction of imports, but we had to have approval in the White House, and for some reason we couldn't figure out, the approval had been unnecessarily delayed.

Then he states:

In previous administrations, it was often approved right away. The bureaucracy of the White House at this time was such that it was very difficult to get them to act.

Then on page 40, I would call your attention to the first answer on that page which states:

Well, that was our strategy at that time, was the only way we could get them interested, was to talk about the political significance and the fact that these people, the milk farmers of America, were vital to them and that we needed their help and support, and we wanted to let them know that these were friendly people.

Still, as far as the money involved, we didn't consider that a significant thing. We never said they would contribute money if they got the support or anything like that. What we wanted to do was get their attention.

Then at the bottom, he says:

We didn't say we were going to contribute political—we said the milk farmers were out working to raise money to help in the campaign. We didn't say that was the only reason we wanted the favorable action, but we figured that would at least trigger their interest, and it did. But, it didn't mean there was any offer to contribute the money. The \$2 million figure was just pulled out of the air.

Q. You said it did trigger their interest? How do you know that?

A. Because I got called in by Colson and chewed out.

Q. I see.

A. Finally got Colson. We never intended it to reach the President.

Q. You didn't intend it to reach the President?

A. No.

Q. Why did you address it to him?

A. Because everything you send, you address to the President.

Q. Who did you expect this to get to?

A. Colson.

Q. Did you send a copy to Colson?

A. No.

Q. How were you sure it would get to him?

A. We weren't sure. We figured if we routed it around him, it might work, and it did.

Q. Was the problem that Colson wasn't being particularly receptive to your requests for help on this tariff matter?

A. It wasn't just us. The whole bureaucracy over there was way behind. The Congressmen were complaining, everybody was complaining. You couldn't get any action there either because they were piled up with too much work, or whatever the reason we couldn't get through.

Then on page 45, a question by Mr. Dobrovir:

Q. Getting back to the December 1 letter, did you clear that with anybody, for example with Mr. Parr and Nelson before you sent it?

A. No.

Q. They didn't know that you were sending that letter?

A. They didn't know at the time, I don't believe, unless Mr. Harrison talked to them about it. We were their counsel, and I don't think lawyers ever have to consult with their clients on every move they make.

Since, incidentally, I pointed out, you know, that I didn't intend the President to see it, and I think that is borne out by the memo that you have there which shows that the letter was delivered to Roger Johnson and not to the President, and never went to the President. It went from Johnson to Haldeman, to Colson, according to the White House memo you showed me.

Mr. WALDIE. Where is the memo that it went from Haldeman to Colson?

Mr. ST. CLAIR. We have not been able to locate that, sir.

Mr. WALDIE. So as far as our record shows, it stopped at Haldeman, and it ended up in the safe of Colson?

Mr. ST. CLAIR. That's where it stopped.

Mr. WALDIE. We don't know how or when it got from Haldeman to Colson's safe, do we?

Mr. ST. CLAIR. Only except as this testimony would reflect a memorandum apparently in existence at that time, which we have not been able to locate.

Mr. WALDIE. All right, thank you.

Mr. ST. CLAIR. Then on page 46 he testified about the middle of the page:

Did you have the letter delivered to Roger Johnson?

A. I took it over there and left it with the secretary.

Q. Specifically?

A. Yes.

Q. Did you say to the secretary what she should do with the letter?

A. I said I would like Mr. Johnson to see it and route it to the appropriate people. We never intended the President to see it.

Then on the next page the witness states about halfway down:

All I know is the next time I heard about it is when Colson called me in.

Mr. Dobrovir then asked:

Q. Did you hear from anyone at any time it had gone to Haldeman or anything like that had happened to it?

A. No, not until he showed me this.

Q. Did Colson tell you where he got the letter?

A. No, he was just very upset.

Q. Did he indicate one way or the other about whether the President had seen it?

A. He didn't, but I gathered he hadn't.

Q. How do you gather that?

A. Had he seen it, I think there would have been some comment to that effect.

Then on the following page, 52, about two thirds of the way down Mr. Dobrovir asked:

Did he say why the heck did you put a mention of money in a letter to the President?

A. He was critical of that, he was very critical of that.

Q. Can you recall more precisely what he said?

A. He used some pretty strong language and said you shouldn't have written a letter like that. I said all right, I agree, but we just couldn't seem to get anybody to listen to us.

And that's the end of that.

Mr. MANN. Mr. Chairman, before leaving that and before leaving Hillings, Mr. St. Clair, since this deposition is apparently available, I wonder if there is any explanation in the deposition for the statement at the end of paragraph 3 of his letter: "AMPI also is funding a special project"?

Mr. ST. CLAIR. I am not aware of any reference to that in this deposition, but I can have it checked, thank you.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I wonder if Mr. St. Clair can tell us whether it is correct that Mr. Hillings is a long-time personal friend of Mr. Nixon?

Mr. ST. CLAIR. I do not know that of my own knowledge, sir. I never met Mr. Hillings, so I do not know.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.



Mr. DRINAN. Mr. St. Clair, is there anything else in the whole file about this sentence here in the letter, "The AMPI is also funding a special project," that this lawyer writes that to the President himself and simply assumes that this is known. I wonder if Mr. Colson was angry over that, among other things? Is there any reference, in other words, to this special project in the funding by the milk people in the rest of the document?

Mr. ST. CLAIR. Yes, I believe there is. In the special staff presentation, I believe there was mention made of the employment of an agency under the name of Baroody, I believe, for public relations services. It may well be that that was the special fund.

Mr. Colson, I think it is the fair intendment of his testimony, was mad at the reference to any money, be it a special fund or \$2 million or whatever. He thought it was inappropriate to mention any money in the letter.

Mr. DRINAN. Thank you.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. If I can be helpful to Mr. Seiberling, Pat Hillings is a long-time friend of the President. He was a former Member of Congress, I think for perhaps as many as 20 years, from California.

Mr. ST. CLAIR. Mr. Chairman, the final item is a memorandum to the file from one Donald G. Sanders, dated December 7, 1973. Mr. Sanders apparently is on the staff of the Senate select committee and this relates to an interview with Mr. Murray Chotiner who, as we know, is now deceased. In the last paragraph of this memorandum, Mr. Sanders recites "In 1971-72 Colson showed Chotiner the Hillings letter which he had in his safe."

The final item is an affidavit relating to the Senate select committee interview which simply authenticates the memorandum. Tab 7.

Mr. McCAHILL. The President, on December 31, 1970, by Proclamation 4026, established quotas totaling in excess of 25 million pounds for three of the products and in excess of 400,000 gallons for the fourth. It had been previously reported to the White House that any modification from the Tariff Commission's recommendation of zero quotas on three items and 100,000 pounds on another would be viewed on the Hill as a "slap in the face" by the dairy people.

Mr. ST. CLAIR. The President's proclamation is set forth in tab 7a. I believe the description is substantially accurate. Tab 7b is a memorandum from one Dick Burress to Mr. Whitaker with respect to the subject matter of Tariff Commission recommendation on quotas and the reference to the slap in the face is included in the last sentence of the second paragraph, which reads "Any modification would be viewed as a slap in the face by the dairy people."

Quite clearly, the President's proclamation did not follow the Tariff Commission recommendation by the amounts established as shown in this tab. Tab 8.

Mr. McCAHILL. During late 1970 and early 1971, the dairy industry actively sought congressional support and action in its effort to obtain an increase in the milk price support level.

In February and March of 1971, approximately 100 Senators and Congressmen wrote the Secretary of Agriculture to urge that the sup-

port price be increased. Most wanted the price raised to 90 percent of parity. Some asked that the price be raised to at least 85 percent of parity.

Mr. ST. CLAIR. The first item is testimony in executive session by Mr. Harold Nelson. Commencing on page 118, the retyped version, the paragraph beginning just above the middle of the page, he states: "The prime movers in this were AMPI, Mid-America, and Dairymen, Inc." He says those were the prime movers.

He then states there was a prime opponent to it initially, and that was another cooperative, Land-O-Lakes, which is legally a cooperative but has a different philosophical approach.

Then he says, and so this support was pretty widespread throughout the United States, as far as dairy cooperatives were concerned.

Then Mr. Weitz asks, near the bottom of the page: "Now what time period are we talking about? The first decision by the Secretary of Agriculture, not raising price supports, was March 12. Would you have begun this effort let's say 1 month or 2 months before that time?"

Mr. Nelson says, "I would say at least that.

"Mr. WEITZ. At least 1 month or 2 months.

"Mr. NELSON. At least that."

On the next page, he says, "So it would be fair to say that throughout the early part of 1971, the first 2½, 3 months of 1971, you were meeting with both representatives of the administration and also with the various Congressmen and so forth to obtain their support."

Mr. Nelson says, "You are talking about 'you', you are not using the personal pronoun, you are using the whole collective effort."

And Mr. Weitz, I guess it is says, that is right. That is the way it should read, anyway.

Near the bottom of the page, Mr. Nelson says: "I don't recall any specific communication, but it was no secret. There was not anything furtive about the effort with Congress. It was a well-known, well-publicized fact."

Now, I observe that the support for the second portion is not included in this and I am not clear why it is not.

It has been pointed out to me that the letters and telegrams to the Secretary of Agriculture have been transmitted by the White House to the Judiciary Committee and noted at book 6, volume 2, section 19. This is a rather large volume of materials and obviously, it would not be appropriate to include it here. But that cross-reference should be of assistance to you.

That book 6 is book 6 of the special staff presentation.

Mr. LATTA. Mr. Chairman?

Mr. DONOHUE [presiding]. Mr. Latta.

Mr. LATTA. Do we have that information available to us? I have not seen it.

Mr. SEIBERLING. It is in book 6, volume 2.

Mr. DONOHUE. Counsel can probably answer that.

Mr. JENNER. The letters themselves are available for inspection in the file.

Mr. LATTA. They have not been included in our tabs presented to us.

Mr. JENNER. No.

Mr. ST. CLAIR. May I, by way of explanation, I have seen these and I think I am describing maybe a pile that high, something like that [indicating]. And they are, as you would expect, letters, sometimes forwarding constituents' letters and the like. They are all available in the staff if anyone cares to look at them.

Mr. SARBANES. They were summarized.

Mr. HOGAN. Mr. St. Clair, on tab 9, do I recall accurately that Speaker Albert also either called the Secretary of Agriculture or the White House in this regard?

Mr. ST. CLAIR. I do not seem to have a memory of that, Mr. Hogan. I would not say it is not so.

Mr. HOGAN. I wonder if our counsel could refresh my recollection.

Do I recall that Speaker Albert was among those who either called the White House or the Secretary of Agriculture urging this action?

Mr. JENNER. That is right. He called Secretary Shultz.

Mr. HOGAN. He called Secretary Shultz urging this action?

Mr. JENNER. Yes, sir. I think he also had his own bill pending, which we will show later. Mr. Chairman?

Mr. DONOHUE. Mr. Jenner.

Mr. JENNER. Mr. Chairman, we summarized, made reference to the letters in our statement of information and in our presentation called attention to the fact of the letters.

Mr. ST. CLAIR. Tab 9.

Mr. McCAHILL. Congressional leaders made their views known to administration officials in several private conversations. Congressman Mills urged Clark MacGregor on at least six occasions in late February and early March to urge the President to raise the support price. Congressman Mills telephoned the Director of the Office of Management and Budget, George Shultz, with the same request. Mr. Shultz sent a memorandum to John Ehrlichman indicating the substance of Congressman Mills request for a rise in the support level.

Mr. ST. CLAIR. Tab 9a is a memorandum from Clark MacGregor to Mr. Ehrlichman and Mr. Shultz. The last four lines indicate:

Wilbur Mills has urged me more than a half dozen times in the last 3 weeks to urge the President to announce the 85 percent of parity price support level; the latest Mills appeal to me was by phone late in the afternoon of March 4th.

Tab 9b is a memorandum from Mr. Shultz to Mr. Ehrlichman, relating a telephone call from Wilbur Mills this afternoon re price supports on milk, which I take it is the same conversation to which he made reference in the previous memorandum. Tab 10.

Mr. McCAHILL. Following Secretary Hardin's announcement, March 12, 1971, that the support level would not be raised for the 1971-72 marketing year, intense lobbying began. On March 16, 1971, Richard T. Burress reported to John Ehrlichman that the decision had been hit by partisan attacks and that legislation would be introduced which would require that the price support level for milk be raised to 85 percent of parity; that it would have the support of Speaker Carl Albert and Wilbur Mills and that it would likely pass.

Mr. ST. CLAIR. Tab 10a is the memorandum for John Whitaker from John Ehrlichman. The memorandum is dated, apparently, March 16 and the transmittal sheet is dated March 18.



The 3d paragraph is called to your specific attention, reading as follows: "As expected, this decision has been hit by partisan attacks and an effort has been made to require, through legislation, an increase in the price support." Reference is made to Senator Humphrey's call for an increase, Congressman Obey included the refusal to raise the milk price-support level in his list of antifarmers actions by the administration, and so forth.

I do not think much would be added by reading any further. It is clear that this announcement had adverse political reaction. Tab 11.

Mr. McCaHILL. In the House, 28 separate bills were introduced between March 16 and March 25 to set the support price at a minimum of 85 percent and a maximum of 90 percent of parity; 29 Republican and 96 Democratic Members introduced or cosponsored this legislation.

In the Senate, 28 Senators introduced legislation on March 6, 1971, that would have required support levels at a minimum of 85 percent of parity. Of the bill's sponsors, 1 was a Republican and 27 were Democrats; 3 days later, Senator Hubert Humphrey sponsored his own bill seeking higher parity.

Mr. St. CLAIR. We included in this tab a listing of the bills and the sponsors, with the legislative purpose, simply to show the wide support for such legislation and identifying the individuals who were in support of such legislation. Tab 12.

Mr. McCaHILL. On March 19, 1971, John Whitaker reported to John Ehrlichman that contrary to a vote count of the previous night, Secretary Hardin is convinced there is a 90 percent chance that an 85 percent of parity support bill will pass Congress and that the President should allow himself to be won over to an increase to 85 percent of parity.

Mr. St. CLAIR. Tab 12a is the memorandum of March 19 from Mr. Whitaker to Mr. Ehrlichman, stating in substance as the paragraph indicates. Tab 13.

Mr. McCaHILL. On the morning of March 23, 1971, the President called Secretary of the Treasury Connally. The primary subject of the conversation was an unrelated matter. The latter part of their conversation touched on the fact that the President would be meeting later that morning with the dairymen, the potential effect of a support level increase on consumer prices and that the President wanted a decision that day.

Mr. St. CLAIR. In support of this, we have the President's log of contacts with Mr. Connally and Secretary Connally's log. The substantive report is the tape recording of a telephone conversation which, you may recall, was one-half of a conversation. It was only, I believe, the President talking, which has been played and the transcript of which, of course, is available to the committee. We did not repeat it here.

Mr. COHEN. Mr. Chairman?

Mr. DONOHUE. Mr. Cohen.

Mr. COHEN. Mr. Chairman, could I address this question to counsel?

Could you tell me what time the actual call was to Mr. Connally, the time of the conversation? You indicate that the latter part of the

conversation touched on the fact that the President would be meeting later that morning with the dairymen. As I recall the evidence, the telephone conversation took place around 10:25, about 5 or 10 minutes prior to the meeting with the dairymen which occurred at 10:35. Is that correct?

Mr. ST. CLAIR. Well, it is fairly indistinct, but tab 13a, under the heading "Phone Calls" on the right, says, I think it is from "The President." Then in parentheses, it says 10:15, maybe. I cannot really read it.

Mr. COHEN. But it would be within a matter of minutes.

Mr. ST. CLAIR. It would be shortly before if these logs are correct.

Mr. COHEN. So the Connally conversation took place just a brief time before he actually joined the President with these gentlemen around 10:35?

Mr. ST. CLAIR. It would appear so, yes.

Mr. MEZVINSKY. Mr. Chairman?

Mr. DONOHUE. Mr. Mezvinsky.

Mr. MEZVINSKY. With regard to the tab, the subject of the conversation earlier was an unrelated matter and we only have part of that tape. Have you listened to this conversation?

Mr. ST. CLAIR. I think I heard it here.

Mr. MEZVINSKY. Have you heard anything beyond what you heard here?

Mr. ST. CLAIR. I do not recall whether I have or not, sir.

Mr. RANGEL. Mr. Chairman, may I ask perhaps Mr. St. Clair or our counsel, is this the tape we heard where the conversation continued, but the transcript stopped, where Mr. Connally and the President said that they were going to talk further about something else?

Mr. ST. CLAIR. Are you asking me, sir?

Mr. RANGEL. Yes.

Mr. ST. CLAIR. I do not think so. I think the one you make reference to is the ending of the meeting of administration officials in the afternoon. As they were all getting up and leaving—rather indistinctly, but I think rather clearly, Secretary Connally says, may I speak to you about another matter. Or words to that effect.

Mr. RANGEL. Thank you.

Mr. ST. CLAIR. I think that is right.

Mr. THORNTON. Mr. Chairman?

Mr. DONOHUE. Mr. Thornton.

Mr. THORNTON. One question of clarification, please. Is Mr. John C. Whitaker still around the White House or available to inquire whether he might be the JC who is referred to in the memorandum to John Brown?

Mr. ST. CLAIR. Sir, I am embarrassed to say I do not know whether Mr. Whitaker is still here or not, but I could find out.

Mr. SEIBERLING. Mr. Whitaker is Under Secretary of the Interior, I believe.

Mr. ST. CLAIR. I had a feeling he had some position of importance and I was embarrassed not to know it.

Mr. THORNTON. Would it be possible to inquire of him whether he is the "JC"?

Mr. ST. CLAIR. We could certainly make an effort to see if he is available, I am sure.

Mr. JENNER. Mr. Altshuler has some precise data responsive to Mr. Cohen's inquiry as to when the call was made. May he state it?

Mr. ALTSHULER. According to the White House logs, the time of the call between Secretary Connally and the President, the call was placed at 10:18 a.m. and I think our transcript shows it was a call of just 2 or 3 minutes.

As to the substance of the call, I think the transcript will bear out that the President said he did not want to cross the bridge that day; rather that he wanted the decision that day. But I think the committee will have the transcript and the tape available to refer to on that subject.

Mr. ST. CLAIR. Tab 14.

Mr. McCABILL. The meeting had been planned and scheduled some months in advance. The President originally invited the dairy leaders during a courtesy telephone call on September 4, 1970, and a courtesy meeting on September 9, 1970. Specific arrangements were begun in January 1971. The Department of Agriculture obtained a list of the officers and representatives of the major dairy industry groups. A list of potential invitees was forwarded to the White House by Secretary Hardin on January 26, 1971, with his recommendation that a meeting be scheduled.

On February 25, 1971, Secretary Hardin was informed that the President had approved the meeting for 10:30 a.m., March 23, 1970.

Mr. ST. CLAIR. Again we describe these earlier visits as courtesy visits, and of course, that is our view of them. It is not binding on the committee if they feel otherwise.

The tabs in support of this are, first a memorandum to Mr. Halde- man from Secretary Hardin which is repetitive of a previous copy of that same memorandum, relating to the telephone call from the Presi- dent and an invitation extended to Mr. Nelson and key leaders to meet with the President in the White House and the like, this being dated January 25, 1971.

Tab 14b is portions of the testimony of Mr. Parr on deposition, being interrogated by Mr. Dobrovir.

On page 51, Mr. Parr is asked:

When we recessed, I had just asked you about a meeting at the White House with the President on March 23, 1971.

Q. How was that meeting arranged?

The answer by Mr. Parr was:

In 1970, AMPI was having an annual meeting in Chicago.

There were efforts to try to persuade the President to come to that meeting. He didn't come.

He did talk, as I understand it—I was not at the meeting in Chicago—he did talk, as I understand it, with Mr. Nelson in Chicago, and said the kind of thing that he was sorry he could not come.

Then he discusses things like coming to the next meeting and so on, which we have already covered.

Then at the bottom of page 52, in the brackets, there is this follow- ing testimony. "When was it? And he would like to meet with other people in the dairy industry and to remind Secretary Hardin, just to keep in mind, that he wanted to meet in early 1971 with other peo- ple;" the "he" being the President.



I do not think any useful purpose would be served by reading over the balance of the material, since it is generally repetitive of the earlier meetings and the expression of the President that he would like to meet with other members of the industry.

The next tab is 14c. That is a letter to Secretary Hardin from Mr. Chapin of the White House staff notifying the Secretary that the President has approved a meeting with the leaders of the dairy industry and that 30 minutes at 10:30 a.m. on Tuesday, March 23, had been set aside in the Cabinet room. Apparently, Mr. Whitaker was to be notified by a copy of this letter. Apparently, somebody has written that it was "confirmed with Marion Harrison, 3/2/71." I do not know, I am sorry, who Marion Harrison is.

But in any event, the meeting was set up, obviously, specifically nearly 1 month in advance, as indicated in this memorandum. Tab 15.

Mr. SARBANES. Mr. Chairman?

Mr. DONOHUE. Mr. Sarbanes.

Mr. ST. CLAIR. Marion Harrison, I am informed, is one of the attorneys for AMPI.

Mr. SARBANES. Do we know who confirmed that or could we find out?

Mr. ST. CLAIR. Marion Harrison is an attorney——

Mr. SARBANES. No, no, no; who initialed that and said it had been confirmed with Harrison? In other words, someone apparently within the staff confirmed this with Harrison and initialed it. Do we know who that is or can we find that out?

Mr. ST. CLAIR. I can make an effort to do so. Mr. Chapin, of course, is no longer on the staff. I would make a guess and it would only be a guess, that a secretary in Mr. Chapin's office did.

It might even be Mr. Butterfield, it has been suggested.

Mr. SARBANES. Oh, yes, AB.

Mr. ST. CLAIR. That would be consistent with his duties at that time.

Mr. DANIELSON. Would the gentleman yield for a moment, Mr. Sarbanes?

Mr. SARBANES. Yes.

Mr. DANIELSON. I notice in tab 6a the letter from Pat Hillings. The law firm is Reeves & Harrison, although I cannot on my copy read the first name of Harrison. It is kind of blurred on my copy. It could be that the same Harrison——

Mr. ST. CLAIR. I believe it is.

Mr. DANIELSON. Yes, is a partner of Pat Hillings.

Mr. ST. CLAIR. Mr. McCahill calls my attention to tab 14a that sheds light on that as well. That memorandum in the second paragraph says "Marion Harrison and Pat Hillings, as attorneys for AMPI, have submitted the enclosed list of names for such a meeting. I recommend the President invite them for a meeting at the earliest convenient time."

So that would indicate who Marion Harrison is. Tab 15.

Mr. McCAHILL. The President opened the meeting by thanking the dairy leaders for their nonpartisan support of administration policies.

Secretary Hardin then briefly outlined the problems facing the dairymen and asked for their views. The remainder of the meeting was taken up by the dairy leaders pleading their case for a higher support price and discussion among the President, administration officials,

and the dairymen regarding the economics of a milk price-support increase. No conclusions were reached about the support price. Campaign contributions were not mentioned.

Mr. ST. CLAIR. The support for this is the tape which you have heard and you have available to you a transcript of the meeting with the industry leaders on March 23, 1971.

That same tape—no, I am sorry. That is the only support for that statement. We have not reproduced the transcript because we just do not happen to have it. Your staff has it and I think it was returned by us and everyone else. That certainly is available.

Mr. McCLODY. Mr. Chairman?

Do we have a list of all of the people present at that meeting? I am sort of curious.

Mr. ST. CLAIR. I have a memory that the special staff presentation did have the list, but I may be wrong.

Mr. McCLODY. No, it did not have a complete list, because I was looking for some names that I did not see and in the course of listening to the tape, I thought I identified someone I happened to know. That is why I was rather curious.

Mr. ST. CLAIR. Let me see, sir, if someplace we can find a listing of the people who were present.

Mr. JENNER. Mr. Chairman? We produced the White House list, Congressman McCloidy.

Mr. McCLODY. There was a list of a few names and the others were just lumped together, as I recall, because I was looking for a specific name. I may be mistaken.

Mr. ST. CLAIR. I will see if there is any further information. I believe that what we produced for the special staff is all we have. But I will check it.

Mr. MAYNE. Would the gentleman yield?

Mr. McCLODY. Yes.

Mr. MAYNE. Would that list also show the milk cooperative with which such persons were identified? My memory tells me they were all from AMPI, but I am not sure.

Mr. ST. CLAIR. We will check that.

Mr. JENNER. There were some from other cooperatives, Congressman Mayne.

Mr. MAYNE. Thank you.

Mr. LATTA. Mr. Chairman?

Mr. DONOHUE. Mr. Latta.

Mr. LATTA. A point of clarification. Is this the meeting that the President, when he entered the room, announced that there were representatives from all 50 States present?

Mr. ST. CLAIR. I believe you are right, sir.

Mr. LATTA. Thank you.

Mr. ST. CLAIR. It was quite a long discussion and as I say, there is a transcript available. We do not have one, but it is available in your special staff.

Mr. LATTA. So that it was more than just a handful of people from the AMPI?

Mr. ST. CLAIR. My memory is that if they were not all in AMPI, certainly most of them were. But in this, I could be wrong. But we

will make an effort to see what further information we have in this regard. Tab 16.

Mr. McCahill. On the afternoon of March 23, 1971, the President held a meeting with seven administration officials to discuss the dairy price support problem. The meeting opened with Secretary Connally, at the President's request, outlining the situation. He pointed out that politically the President was going to have to be strong in rural America and that the farmers had many problems and that this was one of the few which the President could do anything about; second, the major dairy groups represent some 100,000 dairymen who are being tapped, labor union style, to amass an enormous amount of money which they were going to use in various congressional and senatorial races all over the country to the President's political detriment. Secretary Connally also advised the President twice that he believed a support level increase to be economically sound.

Mr. St. Clair. Mr. Chairman, members of the committee, this tab, and in fact the next four tabs through tab 20, are descriptive, we believe, of a single meeting on the afternoon of March 23 among the administration officials to discuss the dairy support price program. This was a tape that was played for you and a transcript of which is available to you. Again, we do not have a copy of that transcript, so we simply cross-reference it, with the belief and understanding that if it has not already been read by the members, it will be done.

If I may, with your permission, Mr. Chairman, ask Mr. McCahill simply to read the text of the next four tabs without interruption, because they are all based on the same source. Tab 17.

Mr. McCahill. The discussion then centered on the pending legislation which would require a support level increase. The President stated that he believed such a bill would pass. Secretary Hardin expressed the view that a bill forcing an increase was almost certain to pass and told the President that 150 names were on the bill and that Speaker Carl Albert supported it. Secretary Connally stated that Wilbur Mills also supported it and that it would pass the House beyond any question. Secretary Connally said the move would gain liberal support as it would embarrass the President. Tab 18.

Vetoing such a bill was then discussed. Connally said the dairymen were arguing on Capitol Hill such a veto would cost the President Missouri, Wisconsin, South Dakota, Ohio, Kentucky, and Iowa in the 1972 election. Hardin said the President would not have any choice but to sign it.

The President then made the judgment that Congress was going to pass the bill and that he could not veto it. The President then adopted a proposal by Connally that a tradeoff be made, giving the dairymen an increase in 1971 in return for a promise not to seek an increase in 1972.

Mr. Waldie. Mr. Chairman?

Mr. Donohue. Mr. Waldie.

Mr. Waldie. Just for the record, and I am not going to do anything more than that, but tab 18 is almost entirely comprised of conclusions of law that are not only conclusions of law but are really the essence of the case. They are not evidentiary and I simply want



the record to reflect my objection to their having been stated, particularly the last sentence of tab 18.

I have no further statement to make.

Mr. LATTI. Mr. Chairman? Would the gentleman yield?

Mr. WALDIE. I will be happy to yield.

Mr. LATTI. That tape was played here and that discussion was held. I would be happy to join with the gentleman in going over there and relistening to the tape to see if an adequate—

Mr. WALDIE. I only state that these are conclusions of law. If these words of the President are being stated as evidence, that is fine, but I am just indicating that to state that the President then adopted a proposal by Connally, that is a matter, it seems to me, for a conclusion of those hearing the evidence. To use the conclusion "the President then made a judgment," that is for the people hearing the evidence. The words used in the tape are the evidence that ought to have been submitted in this committee. That is my only objection.

Mr. LATTI. You are not disputing the fact that that discussion took place in that tape?

Mr. WALDIE. I think for this moment in time, Mr. Latta, my conclusions are really not relevant and I do not wish to express them. I wish to express only my objection to the manner in which the evidence is being presented.

Mr. ST. CLAIR. Tab 19.

Mr. McCaHILL. Secretary Hardin then raised the question of the administration getting credit for the increase. Secretary Connally suggested rather that first the Speaker, Carl Albert, Congressman Wilbur Mills, and others be contacted in order to obtain their support, in return, on other legislation. The problem was discussed of how to keep the dairymen from learning of the decision until Congressmen Albert and Mills could be approached but still obtain a promise from the dairymen not to push for an increase in 1972.

Tab 20. At the end of the meeting, the President outlined who was to contact Speaker Albert and Congressman Mills and that he understood J. Phil Campbell would contact the dairymen about not seeking an increase in 1972. Tab 21.

J. Phil Campbell called Harold Nelson after the meeting and asked him if the administration did raise the support level would he and the other dairymen "get off our backs" and not ask for more increases, to which Mr. Nelson agreed. Campbell did not tell him of the meeting with the President, did not discuss anything else, and did not tell him not to boycott a Republican fundraising dinner.

Mr. ST. CLAIR. Support for this is testimony before the Senate select committee, I believe in executive session. The first page, I think, has already been reviewed with you by the special staff. Mr. Weitz is interrogating Mr. Campbell and there is discussion about a call from Mr. Campbell to Mr. Nelson and the discussion is as to what time it was. Mr. Weitz says,

That would indicate, then, at 5:30 in the afternoon, which would have been shortly after the 4:45 meeting you placed a call that did not reach Mr. Nelson.

Mr. Campbell said:

Maybe I didn't. All I know is I placed the call and talked to him. I can't give you the details. I mean you have the records and I will have to accept when it was on there.

Mr. WEITZ. Do you recall him returning the call at your home that evening?  
Mr. CAMPBELL. I recall I talked to him. I don't recall under what circumstances.

Then on the next page, Mr. Campbell states in response to questions by Mr. Weitz as follows:

Mr. CAMPBELL. Yes. I asked him to—well, I said, now Harold if we do change our mind and do raise the price, will you and the other dairymen stop asking us for price increases—well, not price increases but price support increases—because I don't think it is good for the dairymen. Will you get off our backs? And he agreed and said he would.

Mr. WEITZ. You recall using that language "get off our backs"?

Mr. CAMPBELL. Yes, I asked him to get off our backs and he agreed that if we did raise the price support that he would.

Mr. WEITZ. Did you indicate that you had met with the President?

Mr. CAMPBELL. No.

On the next page, at the top:

Mr. WEITZ. Did you discuss anything else in the conversation?

Mr. CAMPBELL. No, that was a very short conversation.

Mr. WEITZ. Did you ask him not to boycott the Republican fundraising dinner the next night?

Mr. CAMPBELL. No, sir, I don't recall even talking to him about that. I don't recall any conversations with him in regard to that fundraising.

Mr. WEITZ. Did you attend that dinner?

Mr. CAMPBELL. No.

Mr. MAYNE. Mr. Chairman, may I address a question to counsel?

Mr. DONOHUE. Mr. Mayne.

Mr. MAYNE. There does not seem to be any documentation, Mr. St. Clair, to support the specific statement in tab 20 and I think an earlier tab that they were trying to avoid another increase in 1972. Nowhere in this Campbell phone conversation is anything said specifically about no increase next year. It is just about "will you get off our backs?"

Do you have any documentation about any agreement not to press for another price-support increase in the following year?

Mr. ST. CLAIR. Yes sir, tab 20 is based on that meeting in the afternoon of March 23, and my memory is quite clear that there was a discussion that there would have to be an understanding with the dairy industry that they would not come back next year if they were going to be given a price support increase this year. That was a matter of some discussion and the phone call that followed, as we view the information in any event, is Mr. Campbell obtaining from Mr. Nelson assurance that they would not be around next year if the President changed his mind this year.

Mr. MAYNE. When you are talking about the meeting, are you referring to the one with the dairy leaders?

Mr. ST. CLAIR. No, sir, the administration leaders in the afternoon. One of the matters discussed was if, as a matter of policy change, we decided to increase, should we spread it out over 2 years? That was understood that they should negotiate for that and that is contained in that transcript of that long meeting with Secretary Connally, Mr. Ehrlichman, Secretary Shultz, Mr. Whitaker, Mr. Campbell, and Mr. Rice.

Mr. MAYNE. But I do not see any documentation.

Mr. ST. CLAIR. It would have to be the transcript, sir, of that meeting, which we do not have but which is available to you from your special staff.

Mr. MAYNE. But I fail to see any documentation that this was ever communicated to the dairy people by Mr. Campbell. This phone conversation we have just talked about is most general in terms and says nothing about next year. It just says "get off our backs." No doubt it was discussed in the administration group, but I cannot see that you have any documentation that that word was passed to the dairy people.

Mr. WALDIE. Mr. Chairman?

Mr. ST. CLAIR. May I respond, sir?

Mr. DONOHUE. You may.

Mr. ST. CLAIR. On the second sheet of the testimony of Mr. Campbell. He says.

Yes, I asked him to—well, I said, now Harold if we do change our mind and do raise the price, will you and the other dairymen stop asking us for price increases—well, not price increases but price support increases—

That, taken together with conversations on the tape are quite clear in my view, sir, that what we are talking about is a 2-year decision here if the price support was to be increased at this time, or perhaps even longer.

Yes, sir.

Mr. WALDIE. Mr. Chairman?

Mr. DONOHUE. Mr. Waldie.

Mr. WALDIE. Mr. St. Clair, I do not recall any allegation that Campbell had called Nelson and asked him to not boycott the dinner. Our evidence, if I recall, or the evidence presented by Mr. Doar and Mr. Jenner, is that Campbell called David Parr, special counsel to AMPI, and asked him not to boycott the dinner and that the next morning, \$25,000 was flown to the dinner. I do not recall any allegation that anyone suggested that Campbell call Nelson. Am I in error on that?

Mr. ST. CLAIR. Well, this testimony, Congressman Waldie, would support the fact that Mr. Campbell did call and talk with Mr. Nelson.

Mr. WALDIE. Well, no one has argued that did not occur, have they?

Mr. ST. CLAIR. Not that I know of. We are suggesting it did occur and that is information the committee should have.

Mr. WALDIE. But why do you suggest that Campbell did not tell him of the meeting with the President and did not discuss the boycott? Has any allegation of that occurred?

Mr. ST. CLAIR. I do not know that any allegations have been made of any nature.

Mr. WALDIE. Why do you deny what they did not discuss? Has any allegation been made that they did not discuss it?

Mr. ST. CLAIR. Yes, I think the special staff presentation could be interpreted to that effect.

Mr. JENNER. Congressman, may Mr. Altshuler furnish some additional data with respect to Mr. Waldie's inquiry?

Mr. ALTSHULER. Congressman, in our book, we did include testimony by Mr. Parr, whose hearsay testimony about a call that he claimed went to Mr. Nelson was at tab 32. Mr. Parr, in his hearsay account of that, said that he thought that there was discussion of boycotting the dinner. We included also Mr. Campbell's testimony that he denied it.



There was additional discussion on the tape of Mr. Chotiner's contacting milk people and it was in that context that Mr. Kalmbach testified that there was a request to reaffirm the pledge of \$2 million.

Mr. WALDIE. All right, I understand that.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN [presiding]. Mr. Latta.

Mr. LATTA. Point of clarification. The gentleman just made a statement about hearsay.

Mr. ALTSHULER. Yes, sir.

Mr. LATTA. When the presentation was first made, did you make the statement that it was hearsay?

Mr. ALTSHULER. No, sir, we did not characterize it.

Mr. LATTA. Why did you use the word, hearsay here?

Mr. ALTSHULER. I think it was Mr. Parr's—

Mr. LATTA. He did not have knowledge of his own?

Mr. ALTSHULER. No.

Mr. LATTA. When you presented this to the committee first on, did you indicate this?

Mr. ALTSHULER. We did not make any conclusion. We presented it to the committee—

Mr. LATTA. In all fairness, when you first presented it to the committee, do you not think in all fairness you should have pointed out that this was hearsay?

Mr. ALTSHULER. Sir, we did not refer to the substance of the telephone conversation at all in our statement of information. We did not allege that it was a statement—

The CHAIRMAN. Mr. St. Clair, will you proceed? Maybe if we just go on and proceed with these last two tabs, we can come back in the afternoon session—

Mr. McCLORY. Mr. Chairman, Mr. Jenner was not here yesterday. We did not take rebuttal statements from counsel yesterday and I think it is going to get into a different type of proceeding than the one we had yesterday if you are going to comment with regard to the presentation.

Mr. JENNER. Thank you, Congressman McClory. I did not regard this as rebuttal, it was a clarification that I thought Congressman Waldie would wish, a back reference to a tab that had already been presented. It is my understanding that there is to be no rebuttal by us with respect to any comments that Mr. St. Clair makes.

The CHAIRMAN. Mr. St. Clair.

Mr. ST. CLAIR. Thank you, Mr. Chairman. Tab 22.

Mr. McCAHILL. Murray M. Chotiner did not know in advance of the decision to increase support levels, did not discuss campaign contributions in seeking a support level increase on behalf of the dairymen, and did not talk to the dairymen in the context of contributions in return for favorable action.

Mr. ST. CLAIR. The first page of the material here is, in my book, totally illegible—it is really the second page, the first substantive page, but I do not think it is necessarily significant. I would like to call your attention to the very bottom of the page numbered 11, in which a question is asked of Mr. Chotiner: "Mr. Chotiner, what, if anything, did you have to do with contributions from the dairy farm political

trusts, TAPE, SPACE, and ADEPT to the Presidential election campaign of Mr. Nixon?"

I will have to take that back. I really do not understand that that question is answered, so I would take that back.

Mr. RANGEL. Tab 22 is taken back?

Mr. ST. CLAIR. No, sir, 22a, page 11. The next page I do want to call your attention to is marked 21 in the upper left-hand corner. This is a question at the top by Mr. Drobrovir: "In any of these conversations was mention made of some totals that the dairy people were planning to contribute?"

The answer is, "No, sir."

Then there is a cross-examination or an examination by Mr. Goldbloom, and he asks Mr. Chotiner a question:

In connection with your efforts to seek a favorable result on the dairy price support level on behalf of your clients, you spoke to Mr. Whitaker and Mr. Colson and Mr. Cashin and Mr. Ehrlichman on the White House staff.

In the course of any of these conversations, was the subject of political contributions by the dairy industry figure in your conversations?

A. No sir.

Page 22:

Q. Did you at any time during those conversations suggest the possibility that political contributions might be made by the dairy industry?

A. No sir.

We talked about support and help for the farmers and not support or help for the campaign by way of contributions.

Finally at the bottom:

Q. Was there any discussion about cash contributions or funds?

A. No, definitely not.

Next, on page 23:

In your conversations with the dairy people with respect to campaign contributions, was there any discussion of the fact that caused this decision to come out favorably after all that the dairy farmers should support with contributions to the Nixon campaign?

A. I don't understand your question.

If I understand it correctly, I resent the question.

Under no circumstances, under no conditions would I talk to any dairy person or anyone else along the lines of their making a campaign contribution in return for any favorable action that may have been extended toward that individual or group.

The answer is unequivocally no.

Tab 23.

Mr. McCAHILL. Herbert W. Kalmbach has testified that as of March 25, 1971, he was unaware of any price support matter and that he does not recall any suggestion or indirect suggestion of a relationship between campaign contributions and governmental actions affecting the dairy industry by members of the dairy industry or their representatives or members of the White House staff. Harold S. Nelson, David L. Parr, and Marion Edwyn Harrison have all testified to the effect that there was no quid pro quo relationship between a milk price support increase and campaign contributions.

The CHAIRMAN. Might I inquire of Mr. St. Clair, I know yesterday you mentioned something about getting away this afternoon. I am prepared, along with other members, to remain here through quorum calls, and since the rules provide that a committee may continue on so

long as there is a quorum of 10, we may do so, if this helps to accommodate you.

Mr. ST. CLAIR. I will be very happy to comply with anything the Chair suggests.

The CHAIRMAN. Then we will try to go through as much as we possibly can. Mr. Cohen.

Mr. COHEN. Mr. St. Clair, I notice in this tab 22, and I guess 23, you cite references to Mr. Chotiner's testimony in the case of *Nader v. Butz*. As I recall, most of the evidence that we referred to in our presentation came from the Senate select committee, an interview with Mr. Chotiner as well as Mr. Nelson and Mr. Kalmbach. I just want to ask you your opinion as to whether or not the testimony in the Chotiner interview with the Senate is consistent with that of the deposition that you referred to as far as whether they discussed political contributions.

Mr. ST. CLAIR. Sir, my memory does not serve me precisely. I do not believe that the interview of the Senate select committee substantively disagreed with it. It may be a matter of emphasis. I do not recall whether it is definite in that as he is here.

Mr. RAILSBACK. Would the gentleman yield?

Mr. COHEN. I yield.

Mr. RAILSBACK. It is my recollection that in that regard, this was kind of a summary by one of the counsel that had interviewed Mr. Chotiner rather than any kind of direct testimonial statement by him. Am I correct?

Mr. JENNER. That is correct.

Mr. RAILSBACK. And I think it was somebody who had interviewed him and had made a memo of their conversations rather than any kind of a direct testimonial statement by Chotiner.

Mr. COHEN. Was there an affidavit, Mr. Jenner?

Mr. JENNER. No, that was not an affidavit.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. St. Clair, a point of clarification.

At tab 22a on page 21, there is the following colloquy, where the witness says to Mr. Dobrovir, the witness being Mr. Chotiner, "When I say no, that is my best recollection. I do not think any total amount was mentioned." That statement, it seems to me, does not preclude the fact that some amounts may have been mentioned and my question is what conversations are being referred to by the witness in his testimony here? I see the preceding page is omitted.

Mr. ST. CLAIR. Well, these are, as I understand and recall, Ms. Holtzman, conversations that Mr. Chotiner, who at this time, I think had left the White House and was representing dairy industries, that he had with administration officials regarding his efforts on behalf of the industry to obtain an increase in the price support.

I do not know that I can identify precisely who the individuals were at this time.

I think we may well have access to this entire deposition, if I may see if I can give you further information in that regard.

Ms. HOLTZMAN. That would be helpful in assessing the statement you have made.



Mr. ST. CLAIR. Thank you.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. I answered correctly Congressman Cohen's inquiry but perhaps might have left an incorrect impression with him. There is an affidavit of the Senate select committee attorney, of his interview, and that appears in tab 34.3 of book 6, volume 3. But no affidavit of Mr. Chotiner.

Mr. COHEN. What about the interviews with Kalmbach and Nelson? Were those interviews or summaries as they were with Chotiner?

Mr. JENNER. Those were executive session testimony.

Mr. COHEN. Thank you.

The CHAIRMAN. Please proceed.

Mr. ST. CLAIR. Thank you. Tab 23a, Mr. Chairman, is deposition testimony of Mr. Kalmbach.

On page 55 thereof, which is the first page shown here, a question is asked—just below—line 18, I guess it is—

Q. On March 25, that lunch with Mr. Ehrlichman, if you can recall, did he happen to mention anything about dairy farmers? Did he mention, for example, that there had been a big meeting with a whole lot of dairy farmers the day before with the President?

A. I remember nothing of that sort.

This is Mr. Kalmbach.

Q. So it is your testimony that at that time you were totally unaware of the pendency of any price support matter as related to your fund raising activities?

A. I was unaware, and I remember—I have no memory at all, Mr. Dobrovir, of being aware of pending price support, increases, or whatever.

Then further on, on page 111, I would call your attention to the question which is a rather long one—at least that portion of the question that begins with line 10:

I want to ask you whether during the course of any of these contacts and discussions about campaign contributions, specifically by the dairy industry that we have talked about: was there ever a suggestion made, either by members of the dairy industry or their representatives, or by representatives of the White House staff, or by members of the campaign organizations, that the making of campaign contributions, or the failure to make such campaign contributions, would have a specific result with respect to particular governmental actions which might have an impact on the dairy industry?

The answer was:

No, I do not recall ever remembering any such statements.

Q. Was there anything by indirect suggestion by members of any of these groups to that effect?

A. And again I cannot recall ever any indirect suggestions of such.

Q. Did you ever have particular discussions about the decisions reached by the government, whether it be by the President, or by Department of Agriculture, with respect to import quotas or the dairy price support program?

A. I have no memory of any such statement or discussions.

Q. And do you recall any members of the dairy industries or their representatives urging upon you to make contact with members of the administration with respect to specific requests for governmental actions?

A. I have no memory of ever being urged by any representatives of the dairy industry or any of their attorneys ever urging that on me.

Tab B is the testimony of Mr. Kalmbach again taken in the case of Ralph Nader against Butz. On page 10 thereof, he is asked this question.

Now can you recall when you first heard of any of these three trusts, TAPE, SPACE, or ADEPT?

A. Well, it seems to me that in 1971, I was talked to along the lines that one or more of these dairy cooperatives were interested in making a contribution towards the forthcoming 1972 campaign. That is my recollection of first hearing this.

Then moving on to page 12, Mr. Dobrovir asks the question :

Q. Now this conversation in mid-1971, whomever it was with, was that the first time you became aware of the existence of TAPE, SPACE, and ADEPT?

A. Again it seems to me this is the first time that I was briefed on the ADEPT-SPACE terminology.

Now moving along to page 14, at the top of the page :

Q. How long have you worked politically with Mr. Nixon?

A. Relating it to various campaigns, I helped formally and informally for—back before 1960.

Q. Do you consider that your relationship with President Nixon is a close one?

A. Yes, I do.

Q. In connection with your political activities, was it generally your custom to keep him advised of your activities?

A. No.

Q. It is not?

A. It is not. That is to my political activities.

Q. On his behalf?

A. Yes, that is right.

Q. Why is that? Why do you not think it appropriate to keep him advised of your activities?

A. Well, I don't regard myself as reporting to the President my political activities. I feel that it is somewhat inappropriate for me to regard myself as reporting to the President in this area.

Then I would move along to page 21. Near the bottom of the page, there is an answer by the witness :

No, that is consistent with my recollection which is that I may have met him in 1971; again the purpose of that meeting would have been to talk to him about any procedures that they had in mind as to how to effect contributions to the campaign in a proper and regular manner.

The "him" in this respect is Mr. Nelson, I believe, as shown on page 20. or Mr. Harrison—is it? Yes, it is Mr. Marion Harrison.

Then on the next page, page 22 :

What contacts did you have with Mr. Harrison in 1971 in connection with these dairy organizations?

A. Again, he talked to me to get my counsel as to the proper way to effect these contributions that I had understood might be forthcoming from the dairy cooperatives, which I understood were clients of his.

Q. And what kind of counsel was he seeking?

A. Just counsel as to procedures.

Then tab 23c is the deposition of Mr. Nelson in *Nader v. Butz*.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I wonder if we could be advised as to when Kalmbach—when we had our staff presentation, we had Kalmbach's grand jury testimony, which frankly, seems to me to be at great variance with what we are studying right now. What were the respective dates?

Mr. ALTSHULER. Congressman, the testimony we included of Mr. Kalmbach's was executive session testimony at the SSC.

Mr. RAILSBACK. Oh, was it?

Mr. ALTSHULER. It was beginning around February of this year.

Mr. RAILSBACK. So it was after these——

Mr. ALTSHULER. Yes, these were all 1973 depositions.

Mr. RAILSBACK. I just mention that. I am wondering what your purpose is in this particular presentation? Is it to show that Kalmbach is not trustworthy, or is, are we to believe the credibility of these statements?

Mr. ST. CLAIR. This is sworn testimony. It is not interview testimony. It is sworn testimony previous in time by almost a year. I would suggest it probably is entitled to greater weight, perhaps. But this is something the committee is going to have to deal with.

Mr. RAILSBACK. Thank you.

Mr. ST. CLAIR. But it seems to me this is information the committee should have.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. St. Clair, going back a bit for point of clarification, I wonder when exactly Mr. Kalmbach saw the letter of Patrick Hillings under tab 23a on page 112, he is being questioned. He says:

Mr. Kalmbach, you have read the letter from Patrick Hillings to President Nixon in December of 1970, have you not?

A. Yes I have.

I wonder what the evidence is as to when Mr. Kalmbach actually saw that letter?

Mr. ST. CLAIR. Sir, I do not know. I really don't. Maybe during the noon recess, we can read through some of this to see if we can shed some light on it.

Mr. DRINAN. Thank you.

Mr. ST. CLAIR. It is clear he was aware of it at the time of this interrogation.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. It appears to me that what is happening there is that he is being shown the letter by the examining attorney.

Mr. ST. CLAIR. That would appear to me to be the case, too, but I would want to be more sure than that.

The CHAIRMAN. Please proceed.

Mr. ST. CLAIR. Mr. Chairman, then on page 76, under the heading, "Cross examination by Mr. Goldbloom," he asked, characteristically apparently, a rather long question:

Q. I have a couple of questions, Mr. Nelson. During the course of your various discussions with Members of Congress or congressional staff members or the President or members of the White House staff or with whomever you may have come in contact or officials of the Department of Agriculture in connection with your efforts to obtain a satisfactory—that is, satisfactory to your interest—result concerning the price support level were there discussions to the effect that the making of political contributions by the agricultural trust would have an effect or an impact upon the decisions to be reached by the Government as to the price support level?

A. Absolutely not.

Q. Did anyone intimate to you that the making of political contributions, or for that matter, the failure to make political contributions, would have any kind of effect on such a determination?

A. No, they did not.



Q. And in the course of your discussions did you or others representing your interests suggest that the making of political contributions might have a beneficial result?

A. No. Absolutely not.

On the next page, 77:

A. I'd just like to say this: I take it that what you are asking me—the essence of what you are asking me is, was there a quid pro quo.

Q. Exactly.

A. There's never been a quid pro quo in my total experience.

Then 23d is the testimony of Mr. David Parr in the same case, *Nader v. Butz* and on page 152 thereof, the question is put:

In connection with the efforts that you testified about in which you participated to obtain a change in the Secretary's March 12th decision to maintain the price support level at \$4.66 a hundredweight, which is what it had been the previous year, did you either believe, or say to anyone, that the making of political contributions by TAPE to any committee or group supporting either the President of the United States or Republican congressional candidates could achieve a change in the price support determination?

A. No.

Q. Did anyone ever say to you, either directly or by implication, or by inference that if political contributions were made by TAPE to committees which were Republican in nature, that the making of those political contributions would help to effectuate a change in the price support determination of the Secretary of March 12, 1971?

A. No.

Q. Do you believe that the making of political contributions by TAPE, or by any other political trust associated with a dairy farmers organization caused the change in the price support determination of the Secretary of Agriculture of March 25, 1971?

A. No.

Tab 23c is the deposition of Attorney Marion E. Harrison. Cross-examination again by Mr. Goldbloom. A long question, which I think is of the same substantive effect as previous questions. I will try to paraphrase it in the interest of saving time.

He asked Attorney Harrison:

Did you at any time during the presentations that you made to officials of the Department of Agriculture or personnel on the White House staff or for that matter, anyone else, discuss the matter of political contributions that were made or were going to be made or the possibility of their being made in connection with your efforts to obtain a satisfactory result for your client's interests on the dairy price support level?

A. No.

Q. Did you ever at any time in the course of your activities to obtain a satisfactory result for your clients' interests, suggest or intimate or say that political contributions might be made and that this would be a way of achieving a satisfactory result for that determination?

A. No.

Finally—

Did anyone ever suggest to you from the personnel of the Department of Agriculture, personnel on the White House staff or anywhere else for that matter, that if political contributions were made by your clients, that this would help to achieve a satisfactory result for your clients' interests?

A. Certainly not.

Tab 24.

Mr. SEIBERLING. Mr. Chairman?

Mr. HOGAN. Point of clarification, Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I wonder if Mr. St. Clair could tell us whether—these all are statements that there were no political motivations—I mean no influence motivations in making these contributions with respect to price support. Is there any testimony by these people as to why they did make political contributions?

Mr. ST. CLAIR. I do not know of anything explicit to that respect, except that they were anxious to obtain support for their clients, the dairy farmers. I think the thrust of this testimony is it is not a quid pro quo: You do not get the money if you do not give the increase and if you do give the increase, you do get the money.

Mr. SEIBERLING. I see.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, I am wondering if this material that was just presented to us was available to our staff, this testimony, and if so, why it was not presented to us previously?

Mr. DOAR. I can explain that generally, but Mr. Altshuler can explain it specifically.

There was subsequent testimony of all of these witnesses, as well as the fact that after Mr. Kalmbach pled guilty, since he made available a great number of records, taken as a whole, our judgment was that what we presented to the committee was a fair and objective presentation.

Mr. HOGAN. I am wondering about the testimony in the *Nader v. Butz* case which we have been hearing here. If this is not an adversary proceeding, I would assume we would include exculpatory as well as inculpatory material.

Mr. ALTSHULER. With regard to the *Nader v. Butz* deposition testimony, the testimony was given, some of it in 1972, much of it in early 1973. Almost all of the principals had testified as late as early this year in the Senate select committee and we include for the most part the most recent testimony, although there was some of this *Nader v. Butz* in our fact book as well.

Mr. HOGAN. I certainly do not recall hearing any of this exculpatory material in any of our staff presentation.

Mr. DENNIS. Mr. Chairman, may I inquire?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Following up on what Mr. Hogan is saying, which I think is a valid point, what you are saying is that you used the later testimony, essentially.

Now, I can understand that very well in an adversary situation and perhaps to my notion, this indicates to me, among other things, that we have had more of an adversary situation here right along than we have been willing to admit. But that is what we are getting, it seems to me. If you people were presenting both sides, you would not have used just the later testimony, you would have used both of them, which are not consistent, and let us see them both. That is Mr. Hogan's point.

Mr. DOAR. Let me say this, Congressman Dennis. I do not think that that is a—I personally was not aware of this earlier testimony.

On the other hand, after 6 months of working with the staff, both the members selected by the majority and the members selected by the minority, I have complete confidence that all of the staff members understood the direction that the committee gave to it to make a fair

and objective presentation. I can assure you that there was no intentional effort on anyone's part throughout this proceeding to keep from the committee any piece of testimony that was pertinent to the inquiry, whether it was inculpatory or exculpatory. There may have been a mistake in this instance—I do not think so. But I do say to you that to conclude from this that there is some sort of number of documents that the staff has shielded from you would be, really, I believe, unjustified.

Mr. DENNIS. Well, Mr. Doar, let me say that I do not make that suggestion, either. I have the greatest respect and confidence in you and, as far as I know, in the staff. They are difficult judgmental decisions you have to make. I recognize that. The most I would suggest is that this might indicate that in making those selections, there has sometimes been perhaps unconscious bias or lack of success, at least, in the effort which I accept you made as you say you did. I believe that is correct.

The CHAIRMAN. Let the Chair state that I believe that since this has come to the attention of the committee members, it will be objectively viewed. I think that both Mr. Doar and Mr. Altshuler, who have spoken now—Mr. Altshuler does not say that there was not a portion of this, but we are glad to have it and this is the reason for this presentation. I believe that it would be absolutely unfair to draw any conclusion other than what is now here in the fact that we did not get that in this one single instance.

Mr. McCLORY. Mr. Chairman, I do not want to, myself, participate in any suggestion that would indicate that staff has not provided us with a fair and impartial and objective presentation, providing both the favorable and unfavorable documentary evidence insofar as the President is concerned. I think that if anything, any omission would be inadvertent or it would be based on a question of judgment.

I feel, too, that the role of counsel for the President to provide any omissions or any gaps or any supplemental material is an entirely appropriate one. I do not think the mere fact that he has available or makes this available to us should imply that we have not had objective presentation without that.

Let me further suggest, Mr. Kalmbach is a witness. We have all agreed Mr. Kalmbach is going to be called as a witness before our committee and we will have the opportunity to examine him at length, both our counsel and the President's counsel, to try to derive what is the truth insofar as Mr. Kalmbach's testimony or position.

Mr. DENNIS. Will the gentleman yield?

Mr. McCLORY. Yes, I yield.

Mr. DENNIS. I would just like to say that I think it ought to be possible on both sides to point out apparent discrepancies without having a suggestion made that reflection is being made on anyone individually or on their integrity or anything like that. I certainly did not intend to make any such. If I seemed to, I am sorry. But that does not preclude me from pointing out an apparent discrepancy. That is legitimate on both sides.

Mr. McCLORY. I am not suggesting that. I just do not want, because it comes from this side, I do not want to leave any inference. I want to express my personal concept, my personal appraisal of our staff. I certainly would not want it to be misunderstood by not speaking out on this occasion.



Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. On this question, I just want to point out that I do not recall in the presentation that we received from the staff any material that was conclusionary in the way that this material is. In effect, what you have here are conclusionary questions asked and a "yes" or "no." None of these questions deals with what was actually said. They say, what was the conclusion about that meeting?

As I recall our presentation, there were no conclusionary elements of that sort. It dealt simply with what was said in a factual way.

I for one do not want to conclude that.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Very briefly, the point has been raised and it might be valuable for committee members to have commentary by our staff on the presentation, written commentary, by our staff on the presentation of Mr. St. Clair in which, either directly or indirectly, there can be comment on why certain evidence was not submitted as an evaluation of that. That would be useful for us, it seems to me, rather than to pose a question at this time.

The CHAIRMAN. We have already instructed, and this was a request made by the members, that there be at the appropriate time the various comments from our staff counsel.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. I would just like to point out, too, I guess we are arguing the point, but this is the first time in three books' presentation that anything of any substance, I think, has been brought to the committee's attention which is basically new in terms of factual or documentary evidence. I think that speaks very well for the fact that the committee staff has combed through the materials available and have been very impartial. The purpose of this session with Mr. St. Clair was to allow him to bring any new factual information to our attention. This, I believe, is the first time he has succeeded in the sense of bringing anything directly new to us.

We have allowed Mr. St. Clair, if I may just finish this one point, we have allowed Mr. St. Clair to offer virtually anything that he wants to, and much over my objection and that of other members, we have allowed him, in essence, to argue the evidence and to introduce evidence of a secondary or derivative nature when he has available or his client has available to him much better evidence, which we are going to argue later.

But I think that the committee staff has done an exceptionally good job of presenting both sides of the evidence that has been available.

Mr. HOGAN. Will the gentleman yield?

Mr. OWENS. Yes.

Mr. HOGAN. The thing that troubled me was that this was not new material. This testimony took place in 1972 and I would assume in a case as important as this that our staff would have certainly read this testimony and it seems to me they should have brought it to our attention. It is not new material. It is 1972 material.

Mr. OWENS. I would point out to the gentleman that there is counsel for the minority on the staff, too, and I think the staff——

The CHAIRMAN. I think that we have had enough discussion. The question is not on whether or not this was or this was not intended one way or another. We have the material which is being presented and the members of the committee will, I am sure, make their judgment as to whether there were intentions or suggestions, whatever they might be.

Let us proceed, Mr. St. Clair.

Mr. RANGEL. Mr. Chairman, could we thank Mr. St. Clair for bringing this to our attention and for the method in which he has presented it?

The CHAIRMAN. Absolutely. I am sure the committee is appreciative of this.

Mr. ST. CLAIR. Tab 24.

Mr. McCAHILL. Economic and traditional political considerations were the only basis of the decision to increase the price support level. Increased costs and other economic factors raised by dairymen, the political pressure which precluded a veto of a bill which would set parity at a minimum of 85 percent and possibly as high as 90 percent, the potential threat of production controls which would decrease the milk supply and the need for an increased supply of excess were factors which caused Secretary Hardin to change his earlier decision.

Mr. ST. CLAIR. In support of this, there is an affidavit of Secretary Hardin executed, I think, after he left the Government, dated March 7, 1974, or at least that is the date of the notarial, but in any event, we have marked for your special attention paragraphs 7, and 10 through 12. In the interest of moving this along, I would only orally call your attention to paragraph 10 which says:

The decision to set the price support level at \$4.93 per cwt. was based entirely on a reconsideration of the evidence on the basis of the statutory criteria.

No. 11. Neither the decision to reevaluate the \$4.66 per cwt. support price level nor the ultimate decision to establish the price support level at \$4.93 per cwt. was based on any consideration other than those outlined in this affidavit. Specifically, at no time did any person or organization promise to lead me to believe that funds of any kind or anything of value would be paid to me or any other person or organization in return for a reevaluation of, or increase in, the price support level.

Paragraph 12. Being cognizant of the views of Congress, as well as the views of the dairy industry and other industries affected by our programs, with respect to the administration of statutes relating to agriculture, is, of course, a fundamental part of the Secretary's role.

Tab 24b.

Mr. DRINAN. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. A point of clarification, Mr. St. Clair. I do not find the tab justified in the material. "Traditional political consideration," as I read Mr. Hardin, he is saying expressly, precisely in the reference that you read that all political considerations are out. It may be that I do not understand "traditional political considerations." Would you care to elaborate on that, please?

Mr. ST. CLAIR. Well, I think certainly the reference in paragraph 12, Father Drinan, to being cognizant of the views of Congress is at least an oblique way of making reference to, as he viewed it at least, overwhelming congressional support for the increase.

Then in paragraph 4—I'm sorry, sir.

Mr. DRINAN. No. I think, sir, that that is covered in the second sentence of the tab where you speak of the political pressure which precluded a veto of the bill. I wonder what the "traditional political considerations" are. Both parties follow these and I really think we have to define that because it is not justified in the tab.

Mr. ST. CLAIR. All I can tell you is what I infer that to mean, and that is when the President is faced with a Congress that has apparently sufficient support to override a veto, he has to look at the question from a political consideration that it is going to happen anyway, should I not therefore, change my view and go along with it.

Mr. SARBANES. Would the gentleman yield?

Mr. ST. CLAIR. That is my interpretation.

Mr. DRINAN. Well, in the material that was furnished here and in the whole history of this case, it had been suggested to the President that he veto a bill if a bill came from Congress and then say to the consumers of America that I have protected you from a 1 cent raise per quart of milk. Would that be a traditional political consideration?

Mr. ST. CLAIR. That would be a consideration and probably a traditional one but it was not, that one was not chosen. The other consideration which was, in my view, a traditional political consideration, was that if it is going to happen, then maybe I had better get credit for it and that is only Mr. St. Clair's interpretation.

And very frankly I would not want to put words in the President's mouth. But I think that, I believe that.

Mr. DRINAN. But this is not justified by any information you give us under tab 24?

Mr. ST. CLAIR. Well, sir, I feel that this fairly states it in summary form. But of course—

Mr. DRINAN. I yield to Mr. Sarbanes.

Mr. SARBANES. I take it the considerations you are referring to in sentence one are the ones set out in sentence two, is that correct?

Mr. ST. CLAIR. Yes, I believe that is so.

Mr. SARBANES. Well, then if that is the case, which caused Secretary Hardin—I take it to be accurate sentence one should have said "Secretary Hardin stated that," and that is what the backup material would support, that sentence one plus two that started "Secretary Hardin stated that," and that would be accurate?

Mr. ST. CLAIR. That would be accurate.

Mr. SARBANES. Thank you.

Mr. DRINAN. Thank you.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. ST. CLAIR. Tab 24b. I am sorry.

Mr. MEZVINSKY. Mr. Chairman, on this and following it up, since there is the question of whether or not it is conclusionary, I would like to just raise a point. And I can either wait until after he finishes it so that we can discuss the whole book or I will maybe—

The CHAIRMAN. Why don't we withhold these comments until later? The gentleman from Ohio has already made several points of order regarding this.

Mr. MEZVINSKY. I have got some specific points and then I will make it. Number one is we have subpoenaed some tapes, some conversa-



tions in this area, and I gather Mr. St. Clair's position, or I will say counsel for the President's position is that all of the information we have here in front of us is all that is needed in order to make a decision in this matter.

We subpoenaed, you know, conversations between the President and John Connally on March 22 and March 23. On tab 13 you refer to that conversation specifically of March 23. We have also subpoenaed the conversations between the President and Charles Colson on March 19, 1971 or March 21, 1971, March 22, 1971, four conversations and March 23, March 24 there are three conversations there. And on March 25 as well between the President and John Ehrlichman and March 19, 1971, and then we have one on March 23, 1971, March 25, 1971, one in the morning and one in the afternoon.

Now I just want to understand since this is the last tab and you come to a—and I am not going into the merits at this time as to the tab itself, and whether it is a conclusion of a statement of fact—but am I to presume then that we can conclude that these conversations that have been subpoenaed by this committee, which would be relevant and pertinent to our inquiry, in the opinion of the majority of this committee, is such that you feel that there is not a basis for further presentation of the evidence as requested in our subpoena?

Mr. ST. CLAIR. Sir, not intending to engage in an extended constitutional discussion, may I make an inquiry through the Chair as to what subpoenas you have made reference to? Are these still outstanding or have these expired?

Mr. MEZVINSKY. These are the dairy subpoenas.

Mr. ST. CLAIR. I know. Is it outstanding or one that has already expired?

Mr. MEZVINSKY. Yes, it is outstanding. Requests have been made and it is my understanding that prior to the subpoena statements were made indicating that this would be all of the material that we would receive.

Mr. ST. CLAIR. If I may then answer, I would not want to speak for the President on any outstanding subpoenas. As you know, he is out of the country. I have wired the copies of them to him. I have not had a response yet, and I would not want to speak for him.

But, if I may respond to the substance of your question?

Mr. MEZVINSKY. Sure. I would appreciate it.

Mr. ST. CLAIR. This is admittedly argumentative but you have the tape of the administrative official meeting in which everyone sat down and decided what to do. They have said that it was raining out the day before. They were not going to do it the day before. That all is submitted in that one meeting in which the decision was made. And it would seem to me to be of only academic interest to know what was said prior thereto because you have the decision and the circumstances regarding its making.

Mr. MEZVINSKY. Mr. St. Clair—

Mr. ST. CLAIR. That is my argument with respect to it.

Mr. MEZVINSKY. OK, thank you. I appreciate that.

Now, as a quick follow up on that, in view of that comment, have you listened yourself to any of the tapes that have been specifically requested to give a basis for that decision which you have just made?

Have you yourself listened to these conversations which you in fact seem to indicate by this presentation will not add significantly to any kind of a determination regarding this particular allegation?

Mr. ST. CLAIR. Well, sir, to answer your question, I have not listened to all of them or all of any one of them. I cannot now state whether or not I have listened to a portion or not of one of them or more.

That is not, however, the thrust of my argument. The thrust of my argument is that the context of the decision meeting by itself forecloses prior considerations, because that is when it was made, and those were the considerations that led to the conclusion.

Mr. MEZVINSKY. I respect that. I guess what I have to say is I question it in regard to the fact that you yourself may not have listened to this and I would simply ask the last point. Is this a decision that you have made or is this a decision that your client has requested you not to listen to these particular tapes? Is this a voluntary action on your part or is this an action by your client not to listen to these particular tapes regarding the dairy matter?

Mr. ST. CLAIR. Well, I will be glad to answer.

The CHAIRMAN. I do not think you have to answer that if you do not want to, Mr. St. Clair.

Mr. ST. CLAIR. I do not want to be in the position of not wanting to answer him. I will only say this, that in my view there is only one person who has the decision with respect to whether or not these are to be produced for any use and that is the President and not his counsel. I do not happen to have that constitutional authority and if anyone tried to vest me with it, I would reject it.

The CHAIRMAN. Well, thank you.

Mr. MEZVINSKY. I don't have any further questions.

The CHAIRMAN. Mr. St. Clair, you have just the other tab, is it?

Mr. ST. CLAIR. Yes; and I can summarize that very quickly.

The CHAIRMAN. Why not, so that we can recess until 2 o'clock.

Mr. ST. CLAIR. This is only done to complete the paperwork with respect to the legal requirements and sufficiencies of that price support program by publication in the Federal Register and the like.

The CHAIRMAN. Thank you; and the committee will recess until 2 o'clock.

[Whereupon, at 12:55 p.m. the committee was recessed to reconvene at 2 p.m. this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

I would like to state that Mr. St. Clair advises that if he is permitted to go on uninterruptedly, and he has not requested that we not interrupt him, that he would be completed with his presentation within 1½ or 2 hours. Is that correct, Mr. St. Clair?

Mr. ST. CLAIR. I would hope so, Mr. Chairman. But, as you correctly stated, I am not in any way suggesting that I am not prepared to answer questions.

The CHAIRMAN. No; I have stated that, because I want to make it clear that it is not as a result of any request from Mr. St. Clair. But, I would hope since we do want to get on with this, and there are some

points of order that have been raised which will be resolved and ruled upon later, that Mr. St. Clair be given this opportunity. And I would urge each member to wait until the formal presentation by Mr. St. Clair is finished.

Mr. ST. CLAIR. Mr. Chairman?

The CHAIRMAN. Mr. St. Clair.

Mr. ST. CLAIR. This book is the last full book that we have prepared for this inquiry. We have in addition to it a group of papers relating to the President's personal income tax returns which will be presented in addition to this book but I do not think they should take a great deal of time.

If I may then proceed to tab 1.

The CHAIRMAN. Please proceed.

Mr. McCAHILL. On June 5, 1971, Ehrlichman sent a memorandum to Dean in which he stated there was a recent episode in which information was leaked to a newspaperman and asking whether this is in violation of any statute and also if there is any other commitment taken by intelligence people regarding secrecy of information in their possession.

Tod Hullin inquired of Dean as to the status of this request in a memorandum dated June 25, 1971. Dean inquired of Hullin on June 29, 1971, whether in light of the New York Times matter the report was still wanted. On July 2, 1971, Dean forwarded this memorandum for Ehrlichman dated June 16, 1971, to Hullin.

Mr. ST. CLAIR. The first tab, 1a, is a very brief memorandum which Mr. Ehrlichman states that the President would like to know whether or not the recent episode of a leak gained through satellite or other intelligence means constituted a criminal violation and that that then was followed by Mr. Hullin making a request on tab b to Mr. Dean for some legal advice, and then that in turn was responded to by Mr. Dean to Mr. Ehrlichman under date of June 16, 1971.

Now, in your book the first and second page may be transposed. I do not know whether we have had an opportunity to make that correction or not, but this memorandum from John Dean to Mr. Ehrlichman purports to review the applicable statutes and law regarding disclosure of intelligence information to newspapers. And I would only cite for the moment the conclusion that the United States has no law similar to England's Official Secrets Act and, therefore, prosecution of a civilian for disclosure of classified materials generally requires proof of disloyal intent. Military personnel may generally be court-martialed for violation of regulations governing classified materials. Certain administrative remedies relating to employment are, of course, always available. Tab 2.

Mr. WIGGINS. Mr. Chairman? Well, counsel, I just want to be sure which leak we are talking about. Is this the Pentagon papers situation?

Mr. ST. CLAIR. I believe it is, sir.

Mr. WIGGINS. All right.

Mr. ST. CLAIR. Tab 2.

Mr. McCAHILL. The special investigative unit was established to deal with the problem of security leaks, and only afterwards did it become a field-operative, investigative force because, in part, of problems arising with the FBI.



Mr. ST. CLAIR. Before going on with this, Mr. Doar just advised me that my response to you, Mr. Wiggins, may not have been accurate, that the Pentagon leak did not take place until a couple of weeks after that. And I do not know what leak was involved in that first note.

Tab 2 deals with the establishment of the special investigative unit which has become known as the Plumbers. And the first tab is Mr. Ehrlichman's testimony before the Senate select committee. On page 2529 thereof, just a little below the middle he states in substance that the unit was originally conceived to stimulate other departments and agencies to do a better job of controlling leaks and the theft of and other exposure of national security secrets from within the departments.

And he states that the unit's job was to get other departments to do a better job on their own. And he states further near the bottom that they were to require vigorous and very active efforts on the part of the responsible people in the departments and agencies to find out who was responsible and how it happened to make sure that it could not happen again.

Then on the next page, 2530, at the bottom in a rather long answer Mr. Ehrlichman details further the circumstances of the formation of the Plumbers and he states that it was at a point of time in connection with the Pentagon papers theft that a whole series of events took place, one of which was—

"One of the first of them," meaning the thefts, "was the Pentagon Papers, which were marked Secret and Top Secret," and so forth.

And then with respect to this he said that he had a call from Mr. Mardian, the Assistant Attorney General, advising that the Justice Department had this firm fact, and this firm fact was that the Pentagon papers had been turned over to the Russian Embassy. Then he recites that the Attorney General came over and reported to the President that this theft had evidently been perpetrated by a number of people, a conspiracy and some of the people were identified by the Department of Justice as having had previous ties in domestic Communist activities.

The Attorney General then reported in response to an inquiry, and Mr. Ehrlichman said, "I better tell you how the inquiry came out." He said:

Mr. Krogh came to me and said "I am having real trouble getting the FBI to move on this," and basically my function was to do down field blocking for Mr. Krogh when he had problems in the Department. And I said "okay I will contact the Attorney General and see what I can do" which I did. The Attorney General called me back and said "we have a very tough problem here. It appears that a top man in the FBI put a routine request that Mr. Ellsberg's father in law be interviewed. The Director has given that top man notice that he is going to be transferred and demoted. And he has further given notice that that interview and interviews of that family are not to take place."

And Mr. Ehrlichman then goes on to describe the results of that information and he then talked with a Mr. Sullivan and asked him "what are our chances of getting the Bureau to move ahead on this right away?" And Mr. Sullivan said, "very slim or none." And then Mr. Ehrlichman says, "So, it was this set of facts, and the real strong feeling on the President that there was a legitimate and vital national security aspect to this, that is was decided first on Mr. Krogh's recom-

mendation, with my concurrence, that the two men in this special unit who had had considerable investigative experience be assigned to follow up on the then leads and rather general leads that were in the file."

And then the testimony is developed that Hunt and Liddy were those two men.

The next tab, b, is an affidavit of Mr. Colson filed in the case of United States against Ehrlichman in the District Court in the District of Columbia. And I will try to summarize this briefly for you.

The entire affidavit is set forth.

On the first page near the bottom he describes that the President "repeatedly emphasized the tremendous gravity of the leaks and his concern that Ellsberg and/or Ellsberg's associates might continue the pattern." And he says "I can remember the President saying on a number of occasions that if the leaks were to continue there would be no credible U.S. foreign policy and that the damage to the Government and to the national security at a very sensitive time would be severe." Then he says "He referred to the many sensitive matters that were then either being negotiated or considered by the administration. For example, the SALT, Soviet détente, the Paris negotiations and his plans for ending the war in Vietnam."

Later on the page he cites Dr. Kissinger was even more upset about the leaks than the President and he believed the leaks must be stopped at all costs, that Ellsberg must be stopped from making further disclosure of classified information and that those acting in concert with him must be stopped.

And then further, two-thirds of the way down relating further to Dr. Kissinger's attitude, he recites that Dr. Kissinger felt that "Ellsberg's activities or the activities of those acting with him or pursuant to this example could undermine the most critical and sensitive foreign policy negotiations."

On paragraph 3 in substance I think it is a further elaboration on the same theme, the President expressing in very clear terms that he wanted this stopped, stating at the bottom of paragraph 3 "If we do not stop them, if we do not find out who is involved and why, we will endanger everything that this Government is trying to do in the most sensitive policy and national security areas." The President says "I don't want excuses. I want results. I want it done whatever the cost."

And the balance of the affidavit goes on further to develop the details with respect to the creation of the Plumbers unit and the like and finally the affidavit ends with a listing of what is known or what was described as contemporaneous knowledge. And that runs on for several pages. I think it would be in the interest of all concerned if this be studied by the members of the committee at their leisure rather than for me to pick and choose any more language from it. I just wanted to give the committee a view of the flavor of Mr. Colson's affidavit dated the 29th of April 1974.

Tab 2c is an affidavit of Mr. Ehrlichman in the same case which was filed in court April 30, 1974. On page 2 thereof, Mr. Ehrlichman describes a meeting with the President and Henry Kissinger in which a description of Mr. Ellsberg is set forth. And I will not repeat it but it appears at the top of page 2. And again he confirms that at these meetings both the President and Dr. Kissinger were obviously deeply con-



cerned, the latter—being Dr. Kissinger—was quite agitated at times. “The President made very clear his instructions that the Department of Justice should seek restraint of publication of the Papers and should vigorously investigate to determine those guilty of their theft and compromise. I transmitted his instructions to the Attorney General and I believe he did so directly on several occasions.”

On the next page in the middle under the heading of the apparent conspiracy another reference made, this is on page 3, page 3 in the paragraph just above the middle where it says “at around the same time,” which was July 6, 1971. “the Assistant Attorney General for Internal Security”, which I believe would be Mr. Mardian, “called me to advise that an ‘intercept’ ” and an intercept I think is a cleaned up name for a wiretap or telephone tap “advised that an intercept established that some or all of the Papers had been delivered to the Soviet Embassy here.” And this was reported, this call was reported to the President.

And Mr. Ehrlichman in his affidavit describes the difficulties that they met with in trying to assist the FBI in vigorously undertaking an investigation as a prelude to the formation of the Plumbers unit which he describes on the pages that follow in his affidavit.

I would then move, if I may, on to page 7 describing the SALT leak. On page 7 it appears that during the week of July 19, 1971, the media carried a story which disclosed this country’s secret negotiating strategy in the Strategic Arms Limitation Treaty negotiations with the Russians. And in this affidavit it states “In my presence, both the President and members of the National Security Council Staff expressed deep concern and even agitation about the damaging effect of this leak.”

And in the next paragraph he describes the President discussed the leaks with Mr. Krogh, and Mr. Ehrlichman on July 24, and that he, the President, demanded that Krogh find those responsible for the SALT leak, “resorting to polygraph tests, regardless of Government employees’ objection. And gave the clear impression to me that Krogh was to use extraordinary measures to carry out this assignment.”

On page 8—

Mr. RANGEL. Mr. Chairman, point of clarification on page 7.

Mr. BROOKS [presiding]. Mr. Rangel.

Mr. RANGEL. Thank you.

Mr. BROOKS. The Chairman was hopeful on his departure that we could have the minimum of clarifying comments with the hope that Mr. St. Clair could expeditiously conclude his presentation. With that I would recognize the gentleman.

Mr. RANGEL. Thank you, Mr. Chairman.

In connection with the extraordinary measures to be used to carry out the assignment, the following paragraph will allow us to believe that Mr. Krogh had that one-to-one relationship with the President and that is the only source of information and evidence that we do have available for us; is that correct? Or to rephrase the question, is there other evidence to establish the extraordinary measures that were outlined to Mr. Krogh?

Mr. ST. CLAIR. Mr. Krogh later has statements on this subject matter and I am not sure that any detail of extraordinary measures were laid out for him.



Mr. RANGEL. Would that be in this book?

Mr. ST. CLAIR. Mr. Krogh's statements are; yes, sir.

Mr. RANGEL. Thank you. Thank you, Mr. Chairman.

Mr. BROOKS. The gentleman will proceed.

Mr. ST. CLAIR. Thank you, Mr. Chairman.

On page 8, the bottom of page 7 and continuing to page 8, Mr. Ehrlichman describes that Mr. Krogh complained of the FBI's failure to cooperate fully in the Ellsberg investigation, that the problem was discussed with the Attorney General and he advised Mr. Ehrlichman of the continuing problem with Mr. Hoover. Mr. Ehrlichman says "I recall specifically Mr. Krogh complaining that the FBI had not even designated the *Ellsberg* case as a primary or priority case." And then continuing on there is more discussion about the complaints regarding the FBI attitude in the matter, and then the affidavit concludes under the statement "subsequent to March 20, 1973," which jumped ahead then in point of time over the operative events by a period of approximately 2 years and these are simply harkings back to prior events by Mr. Ehrlichman and discussions that took place after March 20, 1973, which there has been evidence elsewhere and I will not dwell on them specifically. Tab 3.

Mr. BROOKS. Mr. Waldie.

Mr. WALDIE. Mr. St. Clair, on page 10 of tab 2c, the affidavit of John Ehrlichman, the next to the last paragraph says that the President indicated his after-the-fact approval of this effort to secure evidence of Ellsberg's motives and potential. Does that have reference to the Fielding break-in?

Mr. ST. CLAIR. I do not interpret that specifically as indicating that approval and I think there is definitive evidence that the President did not specifically approve of that act.

Mr. WALDIE. The preceding paragraph talks of the break-in and the President's lack of knowledge of it in advance, and then he says "The President indicated his after-the-fact approval." And my question is, Is there any evidence other than John Ehrlichman's affidavit that the President indicated his after-the-fact approval of this effort to secure evidence?

Mr. ST. CLAIR. I know of none, and there are recorded conversations that the committee has had that indicates that the President disapproved of it, of that specific act. I think he referred to it as a rather stupid thing.

Mr. WALDIE. Will you then tell me what you think Ehrlichman refers to in this affidavit you have submitted?

Mr. ST. CLAIR. I can tell you what I think which is that it is a general reference to covert actions on the part of the Plumbers unit. But I do not believe that it indicates express approval of the break-in. If it does it is not in accordance with the other evidence of a primary nature.

Mr. WALDIE. Thank you.

Mr. OWENS. Mr. Chairman?

Mr. BROOKS. Mr. Owens.

Mr. OWENS. May I direct counsel's attention to page 9, the second to the last paragraph and the statement "when he hung up the President told me they had been discussing the Fielding break-in. He said in substance that the break-in was in furtherance of national security and

fully justified by the circumstances" and so forth. Is there an explanation for that? Doesn't that appear to justify the—I am not asking for justification. I mean are there other circumstances that are not apparent on its face?

Mr. ST. CLAIR. I think the answer to that which I would give would be substantially the same as I gave to Representative Waldie, that if it is to be construed to mean explicit approval of the break-in as an event, I think primary evidence would dispute that. I think that it may well be construed to mean that national security matters were involved and that he felt maximum efforts possible, that as the President, I think has written in another letter to which I think reference has already been made up to the limit of the law. This is one of the reasons why I think it might be important to have Mr. Ehrlichman as a witness. The only problem is that he is currently on trial in this very same matter and that trial may well develop facts that would relate to this point.

Mr. RAILSBACK. Mr. Chairman?

Mr. WALDIE. It is complicated and I appreciate your bringing it to our attention.

Mr. BROOKS. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I appreciate counsel's statement that primary sources might clarify some contradictions that have emerged in the record. I would just ask counsel in that event, doesn't that appear to justify the need for the subpoena that we have issued for some of these conversations between the President and Mr. Ehrlichman?

Mr. ST. CLAIR. Ms. Holtzman, with all due respect, I believe the President's attitude in that matter must be clear. I do not know that I could add to it or shed any more light on it. It is obvious there is a difference of opinion between members of the committee and the President on this matter.

Ms. HOLTZMAN. But this is not one of the subpoenas in which you say that the information would be only of academic interest?

Mr. ST. CLAIR. No. My reference to academic interest had to do with the milk case as I remember.

Ms. HOLTZMAN. That would not apply in this circumstance?

Mr. ST. CLAIR. Well, I do not—you know, to respond to that in an adversary way, in an advocate's manner I think would take quite a long time.

Mr. RAILSBACK. Mr. Chairman?

Mr. BROOKS. Would the gentleman proceed?

Mr. ST. CLAIR. Thank you.

Mr. RAILSBACK. Mr. Chairman, point of clarification.

Mr. BROOKS. Mr. Railsback.

Mr. RAILSBACK. May I just ask on the same page, page 9, what is meant by the *WASAG* case and if you know how that ties into the investigation of the Fielding break-in? This is on page 9.

Mr. ST. CLAIR. I see it. I do not think it involved the Fielding break-in, but I frankly do not know to what specifically that reference is at this moment.

Mr. RAILSBACK. I wonder if our counsel knows.

Mr. ST. CLAIR. I think that has to do with the Welander—

Mr. JENNER. Go ahead.

Mr. ST. CLAIR. You go ahead.

Mr. JENNER. We think, and we only think at the moment it refers to the Yeoman Radford matter.

Mr. BROOKS. Would the counsel be so kind as to furnish that information if you could clarify it?

Mr. ST. CLAIR. That is correct.

Mr. BROOKS. If you furnish it to the committee that would be adequate.

Mr. ST. CLAIR. Fine. I think I could not say to the committee that that is what it does refer to, and that is what is generally, commonly known as the Yeoman Radford investigation. Tab 3.

Mr. McCAHILL. On June 30, 1971, General Haig sent a memorandum to the heads of all U.S. departments and agencies indicating the President's request for a security clearance review.

Mr. ST. CLAIR. This is an extensive memorandum from General Haig to heads of all departments requesting in substance that they review the security clearances to reduce the holdings of high security rankings to a minimum. Tab 4.

Mr. McCAHILL. Colson, during the period immediately following the Pentagon papers disclosure, was responsible for analyzing the accuracy of the Pentagon papers and the relationship between the White House and the congressional committees that were planning to investigate this affair. In late June, Haldeman asked him to find a person who could assume full-time responsibility for these functions. E. Howard Hunt was finally chosen for this position.

Mr. ST. CLAIR. The support for this is Mr. Colson's testimony before the grand jury in California in which he describes, commencing at about line 15, that he had been involved in a prior phase of the Pentagon papers controversy, in the latter part of June or early July and that he dealt with an analysis of the papers, their completeness, their accuracy and their relationship to what exists between the White House and congressional committees which were at that time contemplating investigations.

And on the next page he discusses the consideration of the employing of Mr. Hunt and about line 14 he states in substance that in early July he was asked by Mr. Haldeman to give him recommendations of a man who could be brought into the White House staff who could assume full-time responsibilities for coordinating the research into the Pentagon papers and liaison between the White House and congressional committees. And he goes on on the next page to state that ultimately he urged Mr. Ehrlichman to employ Mr. Hunt. That is all of that tab. Tab 5.

Mr. McCAHILL. On July 2, 1971, Colson sent a memorandum to Haldeman with an attachment containing a portion of Alexander Bickel's argument before the Supreme Court.

Mr. ST. CLAIR. This memorandum was sent by Colson to Mr. Haldeman giving the subject matter New York Times, and apparently the New York Times carried a report of an argument by Mr. Bickel in the Supreme Court, the substance of which is responses by Mr. Bickel to questions regarding his attitude in the event of hypothetical circumstances. For example, if a disclosure would delay releasing of prisoners



would Mr. Bickel be in favor of the disclosure, and ultimately on the last page, on page 3, Mr. Bickel responded that he thinks he would be in favor of the disclosure. Tab 6.

Mr. McCAHILL. On July 3, 1971, Colson sent a memorandum to Ray Price setting forth several points the President wanted included in the Presidential statement.

Mr. ST. CLAIR. This is an internal memorandum from the White House from Mr. Colson to Mr. Price setting forth what Mr. Colson said were some of the points the President wanted to discuss in a public meeting. Most of them are I think self-explanatory, and they are reflective of the material that has already been covered.

I do not know that any useful purpose would be served at this point in highlighting any one of them. Tab 7.

Mr. McCAHILL. On or about July 15, 1971, Ehrlichman told Krogh to begin this "special" national security project. While Krogh was under the overall aegis of Ehrlichman, he did not regularly report to Ehrlichman.

Mr. ST. CLAIR. The support for this is a document that in my book the pages have been misarranged. And it may be that they are misarranged in your book. There is a cover letter of May 4, 1973, from a lawyer by the name of Treadwell who was representing Egil Krogh and containing or forwarding an affidavit of Mr. Krogh, which affidavit is rather extensive and is set forth as the next tab.

If I may impose on the committee briefly I might highlight some of the points in it.

On the first page, paragraph 4, Mr. Krogh describes that at or about July 15, 1971, he was given oral instructions by Mr. Ehrlichman to begin the national security project on a Government effort to determine causes and sources of leaks and in particular the Pentagon Papers. And then he goes on to discuss matters that we have already dealt with, the relationship between Mr. Hoover and Mr. Louis Marx, the father-in-law of Dr. Daniel Ellsberg, in paragraph 6. And then the necessity, in his judgment that because of the attitude of the FBI it was necessary that the plumbers unit undertake the investigation.

Again at the bottom of the page, No. 15, he states that he was also informed by the FBI that the papers had been delivered to the Soviet Embassy.

And on the next page, in 17, he deals with his instructions relating to the SALT story and he states he was personally instructed by the President, in the presence of John Ehrlichman, that the continuing leaks of vital information were compromising the national security of the United States and that the President instructed Mr. Krogh to move ahead with the greatest urgency to determine the sources of the leaks. In the next paragraph he was informed, he states, by the CIA that a news story had put in jeopardy the life of an intelligence agent thus emphasizing the need for increased investigative effort on the part of Mr. Krogh's special unit.

He goes on to describe the facts that the previous efforts had not been very successful, that it was determined that a psychological profile of Dr. Ellsberg would be appropriate, that the CIA was not able to provide any useful information in this regard and that he then explains why in paragraph 25, he states that the psychological profile

could be put together with information derived from Dr. Fielding. And he goes on to describe the plans for obtaining this information from Dr. Fielding.

At the bottom of the page in paragraph 36 he describes Mr. Colson's relationship to the providing of funds for the enterprise and he states that to his knowledge he did not inform Mr. Colson as to the reason for the request for funds.

On the next page he states in paragraph 40 that to his understanding and belief there was no information developed of any kind that was transmitted for use in the prosecution of Daniel Ellsberg. And he continues on to discuss the various activities of the plumbers in a manner which I think is rather self-explanatory.

Tab 7b is testimony before the grand jury in California. This is Mr. Ehrlichman's testimony I believe. And in the middle of the first page, which is No. 2-2, the question is put :

Are you telling us so we can be specifically clear about the matter, that Mr. Krogh never reported to you?

And the answer is :

No, no; I certainly wouldn't say that. But what I am saying is it was sort of subject to my availability. The understanding was that he had pretty much of a free hand, and that it was not necessary for him to report to me on any periodic basis, and only at his discretion.

And Mr. Ehrlichman goes on to discuss the reporting practices of Mr. Young. And on the next page, 2-3, he is asked this question :

Did Mr. Krogh ever seek your approval in connection with any contemplated courses of action that were to be undertaken by the members of the Plumbers group or special unit?

And the answer was :

Yes, in the former connection in the matter of the FBI—and I think he—he and David Young probably jointly came to the conclusion that it was going to be necessary for them to do some first party investigation, so to speak.

Tab 8.

Mr. RANGEL. Mr. Chairman?

Mr. BROOKS. The gentleman from California, Mr. Waldie.

Mr. WALDIE. Mr. St. Clair, just a clarification. There is an error back on tab 2, for your information, that Ehrlichman affidavit as to which you and I had some discussion and it is not dated April 30, 1973, as the tab indicates but 1974.

Mr. ST. CLAIR. Thank you very much. Thank you.

Mr. RANGEL. Mr. Chairman?

Mr. BROOKS. Mr. Rangel.

Mr. RANGEL. Mr. St. Clair, in trying to establish the scope of Krogh's jurisdiction, tab 7 indicates that while generally it was under Ehrlichman, earlier he said that Ehrlichman said that it was a 1-to-1 basis with the President and you told me later that you believed that Krogh could better outline his authority. Should that not be under tab 7?

Mr. ST. CLAIR. Perhaps it could. We have put it at a later point where he has pled guilty and made a statement that pretty well described his situation and we will come to it at a later point in this book.

Mr. RANGEL. Thank you. Sorry for the interruption.

Mr. ST. CLAIR. Tab. 8.

Mr. McCahill. On July 16, 1971, Colson sent a memorandum to Ehrlichman indicating that according to a report from Frank Stanton, the FBI made an extensive investigation of the Rand Corp., centering on alleged leak of documents by Ellsberg and the FBI had a "solid case" but the FBI elected not to act.

Mr. St. Clair. The support for this is a memorandum from Mr. Colson to Mr. Ehrlichman under date of July 16, 1971, which states in almost the precise words of the subject matter of the tab.

The second paragraph for example says:

According to the report given to the Rand executive committee, the FBI had a solid case but did nothing with it. Stanton suggested that it should be a matter of great concern to us, especially if there is any truth to Rand's assertion there was a solid case and the FBI elected not to act.

The next tab is No. 9.

Mr. McCahill. The FBI made two unsuccessful attempts to interview Dr. Lewis Fielding on July 20 and 26, 1971.

Mr. St. Clair. That is self-explanatory and the material in support of it is grand jury testimony of Dr. Fielding. Tab 10.

Mr. McCahill. On July 21, 1971, David Young attended a meeting at CIA headquarters, Langley, Va., discussing the CIA's involvement with the Pentagon Papers.

Mr. St. Clair. This tab and the next few tabs relate to activities on the part of Mr. Young and Mr. Krogh with respect to their efforts to make inquiry concerning the information regarding the Pentagon and other leaks. The first one is a memorandum of conversation that took place July 21, 1971, at CIA headquarters with Mr. Helms, the Director and others in authority at the CIA.

Mr. Brooks. Gentlemen, pardon me. Would counsel desist? That was for a short quorum call and the Speaker's Office notified the staff that they have enough members and we will continue.

Mr. St. Clair. Thank you.

Mr. Young describes the conversation that took place. He asked a number of questions regarding the CIA damage assessment from the leak, what activities the CIA was engaged in with respect to this investigation.

Paragraph 3 for example, he reports that the CIA was not then conducting and had not conducted an examination or study on Ellsberg's personality and it is recited that this was done by DISCO. I am sorry to say that I do not know to what those initials refer. "And they suggested we go to Justice to get the readout on that."

Further down on paragraph 7 it is recited the CIA never did receive a set of the Pentagon papers. The first complete set they saw was June 21, 1971, and the first copy they got was July 1, 1971.

The next paragraph contains a statement that the CIA was not involved in any way in the *Ellsberg* case and some references made then to a former South Vietnamese Ambassador about whom there was a report he had been participating in xeroxing of material with Mr. Ellsberg and there was some discussion as to where this person might now be. And there is some discussion about what other persons had copies of the Pentagon papers.

And on the last page, under paragraph 14 and 15, again the subject of the documents being delivered to the Soviet Union was under



discussion and again a reference is made to an FBI report that this was done on June 17, 1971 when they received 5,000 to 6,000 pages.

In paragraph 15, however, Mr. Helms is reported as saying "Well, I doubt very much if we will get to see it if it is a true report but quite honestly we know the fellow that has been giving us these reports and we have our doubts about them." And that I think is sort of a fair reading of that report. Tab 11.

Mr. McCahill. On July 24, 1971, the President held a meeting with Ehrlichman and Krogh to discuss efforts to identify the source of the SALT leak and the use of a polygraph on State Department personnel suspected of being the source of the leak. The President did not authorize the use of illegal means by the unit.

Mr. St. Clair. The support for this is a Presidential document for the week or in the week of May 28, 1973. And so page 695 of that is a bracketed statement, the last sentence of which reads: "I didn't authorize and had no knowledge of any illegal means to be used to achieve this goal."

The next tab, 11b is again a Presidential statement, bracketed on page 993. "Second, I at no time authorized the use of illegal means by the special investigations unit, and I was not aware of the break-in of Dr. Fielding's office until March 17, 1973."

And then tab 11c is testimony again before the grand jury in California. I believe this is Mr. Ehrlichman again. Yes, it is.

And at the top of the page the question is put "Did the President, when the special unit was created—or at any time thereafter—ever suggest to you or to anyone else in your presence that criminal methods were to be employed by the members of this so-called Plumbers group?" And the answer was: "No; unless the use of the polygraph would be illegal, and I don't know whether it was or not. But other than that, no."

Then in paragraph 11d is the text of Mr. Krogh's letter of resignation to which I made previous reference in response to Representative Rangel's inquiries. And I would call your attention to that portion in the first column on the left side that says: "As the sworn statement makes clear, agreement on this measure was my responsibility, a step taken in excess of instructions and without the knowledge or permission of any superior."

And it goes on and he says "My overriding desire now is to accept full responsibility for my acts and decisions, and to assist in bringing all of the facts and circumstances into the open so that a fair judgment of this activity can be rendered."

Mr. RANGEL. Mr. Chairman? Mr. Chairman?

Mr. BROOKS. Mr. Rangel.

Mr. RANGEL. Do we have anything under oath by Mr. Krogh, because this letter in the newspaper concludes with the hope he would be reentering the service of the United States and this was his letter of resignation when he was first implicated with the burglary. Do we have anything of evidence as to what he was up to at the time that he sent this letter in? He said that "Truth alone can bring the healing and make men free" and he hopes he can return to his office.

Mr. St. Clair. I understand, Mr. Chairman, in response, if I may, that in substance, Mr. Krogh stated this before the court upon his

sentencing. We have, I think, some more testimony in this regard.

For example, the next tab, the grand jury testimony, in which Mr. Krogh says—no; this is his guilty plea before Judge Gesell. He states—

“The COURT. You tell me in your own words, Mr. Krogh, what your involvement in this was.”

He stated: “Yes, sir. As Director of the special investigations unit, known as the Plumbers, I approved an operation which consisted of an entry without authority into the office premises of Dr. Lewis Fielding in order to acquire information regarding Dr. Ellsberg.”

Mr. RANGEL. Of course, that doesn't deal with our basic question as to what authority did he deserve from his superiors.

Mr. ST. CLAIR. I think I would agree with you, sir, and what I think I should do is see if our files have further segments of that statement. If so, I'll add it as a supplement.

Mr. RANGEL. Thank you.

Ms. HOLTZMAN. Mr. Chairman?

Mr. BROOKS. Ms. Holtzman.

Ms. HOLTZMAN. A point of clarification.

Mr. St. Clair, in tab 11a, in the Presidential documents, there is a statement in behalf of the President “I told Mr. Krogh that as a matter of first priority, the unit should find out all it could about Mr. Ellsberg's associates and his motives.”

I believe the testimony before, that our staff provided, indicated a conversation between the President and Mr. Krogh only on July 24.

I wonder if you could provide us with a date of that conversation between the President and Mr. Krogh?

Mr. ST. CLAIR. I'll be glad to if I could. Would you assist me in indicating where that specific statement is?

Ms. HOLTZMAN. It is in the bracketed section on page 685 in tab 11a.

Mr. ST. CLAIR. I'll try to find out what I can. I think that would refer to a conversation at San Clemente between Mr. Krogh and the President when he was first authorized. I'll see what I can find out.

Mr. BROOKS. Will the gentleman proceed?

Mr. ST. CLAIR. Tab 12.

Mr. McCAHILL. On July 26, 1971, David Young attended a meeting at the State Department to discuss the specifics related to the preparation of the Pentagon papers.

Mr. ST. CLAIR. This is a further record of an interview by Mr. Young, now with the State Department. Previously, he had met with the CIA and he mentioned inquiries of representatives of the State Department regarding these papers and specifically who had additional copies, when they were received, and where they were now.

Finally, on page 3 he sets forth a distribution list for the papers which is self-explanatory.

He states at the bottom that at least in his opinion, there seems to be some question—he says:

The crucial question here seems to be why a cover memorandum supposedly transmitting the 47 volumes was dated January 14, 1969, when in fact the 47 volumes (at least Katzenbach's copy) was not delivered until July 30, 1969.

Frankly, I don't know if that question was ever resolved. Tab 13.

Mr. McCaHILL. On July 26, 1971, Colson sent a memorandum to Ehrlichman recommending that a study be prepared of top secret leaks that appeared in the New York Times and suggesting that Krogh and Young could do this.

Mr. ST. CLAIR. The memorandum is set forth in the tab and states substantially what the tab indicates. Tab 14.

Mr. McCaHILL. On July 28, 1971, Young prepared a memorandum for the record summarizing a meeting he attended concerning overall White House direction of the matters surrounding the Ellsberg inquiry.

Mr. ST. CLAIR. This memorandum prepared by Mr. Young for the record on the date of July 28 sets forth in rather general terms that a meeting attended by Attorney General Mitchell, Mr. Kleindienst, Mr. Ehrlichman, Mr. Mardian, Mr. Krogh, and himself, the status of that investigation. I think that sums it up pretty well. Tab 15.

Mr. McCaHILL. On July 30, 1971, Krogh and Young sent a memorandum to Ehrlichman on the status of the Ellsberg inquiry.

Mr. ST. CLAIR. Again Mr. Young and Mr. Krogh are reporting to Mr. Ehrlichman on the status of their operation. They indicate in paragraph 2 of the first page that they have established a liaison relationship with Justice and Defense "in order for us to be fed the information which they are developing in their various investigations."

On page 2 he describes the actions taken, the first of which is the FBI has been asked to expand its investigation to cover all non-defense individuals and to follow up any other leads falling out of the investigations in the *United States v. Ellsberg* case itself.

Two, they have instructed the CIA to do a thorough psychological study on Ellsberg.

Third, they have asked a Mr. Smyser for an opinion for Henry A. Kissinger on the relationship of timing between the October South Vietnam election and the political exploitation of the Democrats' involvement in the 1963 coup against Diem.

Mr. WALDIE. Mr. St. Clair, was this memo of July 30 brought to the President's attention?

Mr. ST. CLAIR. There would be no way for me to know that. Normally I have observed, sir, and I understand that when matters are brought specifically—that is if a document is brought to his attention as distinguished, perhaps, from a portion of the subject matter, it sometimes bears the citation or the notation, "The President has seen this" stamped on it.

There is also testimony that Mr. Haldeman had a practice of putting a "P" up in the corner and if the President had seen it, then the letter "P" would be checked. This document, as a document, bears neither of those indices.

Mr. WALDIE. There is also testimony that Mr. Haldeman had the habit of putting the symbol  $\pi$  on a document when it was brought to the President's attention and there seems to be a symbol  $\pi$  on your copy.

Mr. ST. CLAIR. I see a  $\pi$  in the upper left hand corner and some initials. I am not familiar with that testimony, it could well be.



Mr. WALDIE. The reason I ask that, there is, in "Actions Taken". "We have instructed the CIA to do a thorough psychological study on Ellsberg."

Was the President aware of that, to your knowledge?

Mr. ST. CLAIR. The answer is I do not know, but by saying that, I do not want to open up the whole field of what I do know that the President knew or didn't.

Mr. WALDIE. I realize that, but is there evidence? I'm not asking you for your personal knowledge.

Mr. ST. CLAIR. No, I do not. Thank you very much.

Mr. WALDIE. Might I point out for the committee's knowledge that there is on the copy that we have of the July 30 memorandum from Krogh and Young, there is no symbol  $\pi$  on our copy.

It is apparently only on this copy Mr. St. Clair has provided us.

Mr. ST. CLAIR. In the upper left hand corner of the first page?

Mr. WALDIE. Yes; with that, I've left it.

Mr. ST. CLAIR. No. 16.

Mr. McCAHILL. On August 9, 1971, Young attended a meeting at CIA headquarters to discuss the problem of leaks.

Mr. ST. CLAIR. Again another memorandum for the record, prepared by Mr. Young relating to a meeting he held at CIA headquarters with Mr. Howard Osborn and Mr. Paisley. He recites there a number of questions that Mr. Paisley will attempt to answer with respect to the general subject of the frequency of leaks, the gravity of the leaks, the relationship between leaks and for example, the likelihood of a SALT agreement, the frequency with which particular bureaucracies are involved and general matters of that kind relating to the general subject matter of leaks, their frequency, the manner in which they occur and the like. Tab. 17.

Mr. McCAHILL. On August 13, 1971, Young and Krogh sent a memorandum to Ehrlichman indicating that an attached newspaper article endangered the life of a clandestine CIA operative.

Mr. ST. CLAIR. This is a memorandum for Mr. Ehrlichman from Mr. Krogh and Mr. Young. The subject matter states "The attached article in today's"—I guess that is August 13, 1971—"New York Times and Director Helms' call of this morning indicating that this is a direct leak of information from a clandestine source and it puts the source's life in danger." I gather that there is an article in the New York Times and that Mr. Helms made a telephone call relating to it that same morning. This memorandum relates to the so-called Beecher/SALT leak, Beecher being the identity of the author of the article appearing in the New York Times; and Mr. Krogh and Mr. Young report that they have conducted extensive interviews at State and Defense with respect to the leak, but had unsatisfactory results.

They report that they understand that the CIA could have gotten to the source of the CIA leaks, "if we had told them to go all out for 1 month to identify the soft spot." They say:

We feel that now we have an opportunity to give CIA the mission of tracking down the source of this leak. Our reasons are—CIA possesses implicit authorization to investigate breaches of its own internal security of which the attached represents a major incident.

In our judgment, we should authorize CIA to nail down the source of this leak dealing with other departments through us.

The FBI has been out of the clandestine business for 5 years and we are most reliably informed it would take an unacceptable amount of time for the Bureau to gear up for such an operation.

If the FBI lacks capability to undertake the mission and as Hoover is most sensitive about CIA encroachment on the domestic preserve, this decision, if taken, should not be made known to Hoover or Mardian, or anyone at State or Defense.

Then they recommend to Ehrlichman :

That you advise Helms immediately following the NSC meeting that we would like him to begin this operation to identify the source of this leak immediately, and that you will so inform the President.

The next is an article appearing in the New York Times of Friday, August 1, 1971, attributed to authoritative U.S. officials.

The article goes on to deal with the Indian-Pakistan relationship with which, maybe, members of the committee are already familiar. I guess this was called the India-Pakistan leak in the documentation. Tab 18.

Mr. McCahill. Ehrlichman first learned of the Ellsberg break-in when he returned from a vacation on Cape Cod and that was a few days after the event.

Mr. St. Clair. This is testimony before the Senate select committee by Mr. Ehrlichman, a very brief reference on page 2536.

Mr. Dash asked the question that has been marked: "And when do you say that you learned of that break-in?"

Mr. Ehrlichman responded "Within 1 day or 2 after my return from a Labor Day trip to Cape Cod."

Mr. Chairman and members of the committee, the next group of tabs relates to the 17 wiretaps and constitutes the President's statement of information regarding those.

Mr. Brooks. Counsel, where is that material?

Mr. St. Clair. It begins at tab 19, sir. This book contains the subject matter of two or three of the subjects under inquiry, this one being the wiretaps. Tab 19.

Mr. Drinan. Mr. Chairman?

Mr. Brooks. Father Drinan.

Mr. Drinan. If I may, a point of clarification before we leave 18.

I recall very distinctly that there was a phone call to Mr. Ehrlichman while he was on Cape Cod and as I recall we had well-documented evidence to the effect that people who had just returned from the west coast spoke to Mr. Ehrlichman about what they had done. I wonder if 18, therefore, in view of that, can be as categorically stated as it is here?

Mr. St. Clair. This is John Ehrlichman's testimony. The tab presentation I think gave Mr. Young's grand jury testimony on the point.

Mr. Drinan. Maybe we should say, therefore, that Mr. Ehrlichman has claimed that he first learned.

Mr. St. Clair. I think that would be a fair statement.

Mr. Drinan. Thank you.

Mr. St. Clair. As I say, I think that matter will be resolved within the next few weeks by the trial now in process. Tab 19.

Mr. McCahill. Following a National Security Council meeting on March 28, 1969, the President directed that the several studies be con-

ducted on alternative solutions to the Vietnam war. One alternative to be studied was a unilateral troop withdrawal. The study directive was issued on April 1, 1969, and on April 6, 1969, the New York Times printed an article by Max Frankel indicating that the United States was considering unilateral withdrawal from Vietnam. At the time the article was published, no official discussions regarding this alternative had been taken up with the Government of South Vietnam.

Mr. ST. CLAIR. The article itself appears as tab 19a, the headline being "Nixon Has Begun Program To End War in Vietnam."

It relates to secret talks and increased South Vietnamese efforts. It refers to the adoption of a new approach. The article is self-explanatory.

The next item is an affidavit of Secretary Kissinger. May I state parenthetically that we'll make a number of references to this affidavit. It was filed in the case of *Ellsberg v. Mitchell* in the U.S. District Court for the District of Columbia and it is fairly extensive in terms of length and subject matter.

It bears the date the 26th day of November 1973. The particular portion that we call attention to in support of this tab is paragraph 4. Dr. Kissinger recites that:

With respect to Vietnam, where the President was determining his broad policy for dealing with the war, both as to negotiating positions and military strategy, newsleaks regarding such plans appeared frequently in the press. For example, following a meeting of the National Security Council on March 28, 1969, the President directed that studies be conducted on several subjects associated with a settlement of the war in Vietnam, including a study of alternatives for a unilateral withdrawal. The study directive was issued on April 1, 1969, and within 1 week thereafter an article appeared in the New York Times on April 6, 1969, by Max Frankel revealing that the Government was considering unilateral withdrawal from Vietnam. Similarly in May 1969 it was decided that the United States could make the initial troop withdrawal from Vietnam, and shortly thereafter articles appeared by George Sherman in the June 3, 1969, edition of the Evening Star and by Hedrick Smith in the June 4, 1969, New York Times, forecasting this decision and announcing that it would be made public following the President's meeting with South Vietnam's President Nguyen Van Thieu on Midway Island the following Sunday.

Then Dr. Kissinger goes on:

Each of the above disclosures was extremely damaging with respect to this Government's relationship and credibility with its allies. Although the initial troop withdrawal increment was small, the decision was extremely important in that it reflected a fundamental change in United States policy.

For the South Vietnamese Government to hear publicly of our apparent willingness to consider unilateral withdrawals without first discussing such an approach with them, raised a serious question as to our reliability and credibility as an ally. Similarly, though in a reverse context, these disclosures likewise impaired our ability to carry on private discussions with the North Vietnamese because of their concern that negotiations could not in fact be conducted in absolute secrecy.

Tab 20.

Mr. McCaHILL. On June 3, 1969, shortly after the decision had been reached to begin withdrawal of troops from Vietnam, George Sherman reported the decision in the Evening Star and indicated that it would be made public following the President's meeting with South Vietnam's President Nguyen Van Thieu. Hedrick Smith made a similar advance release in the June 4, 1969, New York Times. The decision to begin withdrawing troops had not been formally discussed with the South Vietnamese at the time of this disclosure.



Mr. ST. CLAIR. I think there is somewhat of a clerical mixup here. This paragraph 20 has really been fully described previously, and the tabs here are the two articles in question together with that portion of Dr. Kissinger's affidavit to which I have already made reference. Tab 21.

Mr. McCaHILL. In early March 1969, a decision was reached to conduct B-52 raids into Cambodia. These raids were conducted secretly to maintain the tacit approval of neutralist Cambodian Prince Norodom Sihanouk.

However, on May 6, 1969, William Beecher accurately reported these raids in the New York Times jeopardizing the relationship with Prince Sihanouk.

Mr. ST. CLAIR. Tab 21a is the article by William Beecher in the New York Times of May 9, 1969, which is attributed to "knowledgeable sources." It relates that American B-52 bombers in recent weeks have raided several Viet Cong and North Vietnamese supply dumps and base camps in Cambodia for the first time according to the Nixon administration sources, but Cambodia has not made any protest, et cetera.

Then tab 21 is a reference in Dr. Kissinger's affidavit that I have previously described, commencing at the bottom of page 3 in which he states:

Militarily a decision was made in early March of 1969 to conduct a series of B-52 bombing raids on North Vietnamese sanctuaries just inside the border of Cambodia.

Because of the sensitivity associated with Cambodian neutrality and the tacit support for such action by Cambodia's Prince Norodom Sihanouk, it was extremely important for diplomatic reasons that these raids remain secret and strict security precautions were taken to insure that this military operation was not publicly disclosed. Yet notwithstanding all such efforts to maintain the security of this operation, an article appeared in the May 9, 1969 edition of the New York Times by William Beecher, attributed to administration sources, accurately summarizing the conduct of these raids. While there were obvious adverse diplomatic repercussions from this disclosure, its greatest effect was to raise a serious question in the mind of the President as to the ability of the Government to maintain the necessary security required for this and other sensitive military and diplomatic operations. And whether in the future he could make critical foreign policy decisions on the basis of full and frank discussions.

Mr. WALDIE. Mr. Chairman?

Mr. BROOKS. Mr. Waldie.

Mr. WALDIE. Just a couple of questions.

Mr. St. Clair, on your tab, the date of the Beecher article you state is May 6, when, in fact it is May 8. On your footnote on 21a, you state the date of the Beecher article to be May 9 when in fact it is May 8.

Mr. ST. CLAIR. Well, I don't know, sir. Our tab shows it appeared in the May 9 issue. It may have been written May 8.

Mr. WALDIE. I see. Is the May 6 attributable to something?

Mr. ST. CLAIR. That should be 9, May 9. Thank you for the correction. Tab 22.

Mr. McCaHILL. In the May 1, 1969, New York Times, William Beecher reported the five strategic options under study for the SALT negotiations with close estimates of the costs for each option. These options were published before they were considered by the National Security Council.

Mr. ST. CLAIR. This is, again, another article by Mr. Beecher under the dateline April 30, but according to our submission it appeared in the May 1 New York Times edition. It deals with the subject matter described. Again it is attributed to, I think in this instance, only officials, or "an administration official." The comments with respect to that, again in Dr. Kissinger's affidavit, appeared in paragraph 5, set forth in the next tab in which he purports to set forth several other examples of critically sensitive press disclosures occurring during this period with regard to the development of our position on strategic arms on preparation for SALT negotiations with the Soviet Union.

He states:

First, on January 20, 1969, the President directed that an overall study be conducted of the United States Strategic Force posture. A fundamental requirement of this study was to determine what programs should be adopted to insure the credibility of this country's deterrent capability. The study was conducted and included an analysis of five options to support strategies ranging on emphasis on offensive capability at one end, to heavy reliance on anti-ballistic missile systems at the other. Cost estimates for each of the alternative force postures were included. Notwithstanding the obvious need for strict security in the preparation and handling of this report, an article by William Beecher appeared in the New York Times on May 1, 1969—prior to consideration of the report by the National Security Council—setting forth an accurate description of the options as well as a close estimate of the range of costs involved.

Then he goes on to discuss, I believe, another incident. At the bottom of page 5, he concludes on this phase of his affidavit:

Each of these disclosures was of the most extreme gravity. As presentations of the Government's thinking on these key issues, they provided the Soviet Union with extensive insight as to our approach to the SALT negotiations and severely compromised our assessments of the Soviet Union's missile testing and our apparent inability to accurately assess their exact capabilities.

Perhaps more important, evidence of leaks of such closely held intelligence assessments raised serious questions as to the integrity of the USIB and created severe doubts about our ability to maintain security in deliberations on national security policy.

Paragraph 23.

Mr. McCAHILL. On June 18, 1969, in the New York Times, Peter Grose reported on the secret official estimates for the first strike capabilities of the Soviet Union. This was published during the SALT negotiations, thereby prematurely revealing the intelligence basis upon which the United States was developing its SALT position.

Mr. ST. CLAIR. An indistinct, I'm afraid, copy of the New York Times article, entitled "U.S. Intelligence Doubts Soviet First Strike Goal"—at least my copy is indistinct. This is a microfilm reproduction and we'll have to try to do better than that.

In any event, it is dealt with by Dr. Kissinger in paragraph 5 of his affidavit, the second paragraph that appears on page 4.

He recites that in addition to the SALT negotiations leak:

The U.S. Intelligence Board (USIB) composed of representatives of the Intelligence Community, had been engaged for several months in an analysis of the Soviet Union's testing of missiles and in early June of 1969 concluded their review and issued a report which was extremely closely held, setting forth their estimate of the Soviet Union's strategic strengths and possible first strike capability. Because the USIB's assessment varied in its degrees of certainty from earlier statements and reports made by other defense experts in support of the need for the Safeguard ABM system, any public disclosure of the USIB report would provide a useful signal to the Soviet Union as to the disagreement within our Govern-

ment and the efficacy of our intelligence system. It would also prematurely reveal the intelligence basis on which we were developing our position for the impending strategic arms talks. On June 18, 1969, the fact of the interagency disagreement and opposing agency positions were printed in a New York Times article by Peter Grose.

I have already called your attention to his conclusions with respect to that leak. Tab 24.

Mr. McCAHILL. Hedrick Smith, in the June 3, 1969, edition of the New York Times, reported that the President had determined to remove nuclear weapons from Okinawa in the upcoming negotiations with Japan over the reversion of the island. The article stated that the President's decision had not yet been communicated to Japan, thereby preempting the possibility of obtaining a more favorable outcome during the negotiations.

Mr. ST. CLAIR. This leak is set forth as tab 24a, an article by Mr. Smith under the headline "United States Said To Plan an Okinawa Deal Barring A-Bombs." This is attributed to well-placed informants, as appears in the first paragraph. The article is summarized in the tab.

Dr. Kissinger's affidavit with respect to that and its significance is contained in paragraph 6 in the next tab which recites that there were serious concerns during this period over a press leak involving the country's policy toward Japan in our strategy for negotiations on the reversion of Okinawa. He states:

Following a late April meeting of the National Security Council, a national security decision memorandum was issued on May 28, 1969, outlining this country's policy toward Japan, and particularly our negotiating strategy with respect to the reversion of Okinawa. This memorandum set forth our desire to retain nuclear weapons on Okinawa but stated, as a fallback position, that we would be prepared to consider the withdrawal of these weapons while retaining the storage and transit rights.

Shortly after this memorandum was completed, and prior to the negotiations with the Japanese, an article by Hedrick Smith appeared in the New York Times on June 3, 1969, stating that the President had decided to remove nuclear weapons from Okinawa once an overall plan to return the island had been agreed upon.

The article noted that the President's decision had not yet been communicated formally to the Japanese government. The consequences of this disclosure, attributed to well-placed informants, in terms of compromising negotiating tactics, prejudicing the government's interest and complicating our relations with Japan were obvious and clearly preempted any opportunity we might have had for obtaining a more favorable outcome during our negotiations with the Japanese.

Mr. EDWARDS. Mr. Chairman?

Mr. BROOKS. Mr. Edwards.

Mr. EDWARDS. Mr. St. Clair, the memorandum does point out that the President's decision had been communicated to the Japanese Government.

Mr. ST. CLAIR. Dr. Kissinger's affidavit said it had not been.

Mr. EDWARDS. I refer you to tab 24b where it says that the President's decision had not been communicated formally, which would indicate that it had been communicated informally.

Mr. ST. CLAIR. With all due respect, I do not know that I would be in a position to make that inference. Dr. Kissinger's testimony was that it had been prematurely released, so the Japanese Government knew our fallback position, so we never got a chance to indicate our



preferred position because this notification was as to our fallback position.

Mr. EDWARDS. Yes. Would you suggest that tab 24, the second sentence, should say the article stated that the President's decision had not yet been communicated formally to Japan?

Mr. ST. CLAIR. That would, of course, be strictly accurate but it would be unfair in my judgment to infer from that that it had been informally communicated because the thrust of Dr. Kissinger's statement was that this was prematurely released to the public and therefore we had no opportunity to present our prior and preferred position to the Japanese because they could read our fallback position in the New York Times.

Mr. EDWARDS. Thank you.

Mr. ST. CLAIR. Tab 25.

Mr. McCABILL. Morton Halperin was Chief of the National Security Planning Group and therefore was one of several persons having access to the information which leaked. In this position and during his tenure as consultant to the NSC, Dr. Halperin received extensive exposure to classified information, much of which remains confidential to this day. Dr. Halperin was removed from access to sensitive material regarding national security matters following publication of one of the Beecher articles in the New York Times.

Mr. ST. CLAIR. In support of this as tab 25a is the affidavit of Mr. Halperin, sworn and subscribed to on November 12, 1973. The portion to which we make specific reference appears on the top of page 2 but I think we should start reading on the last line on page 1, paragraph numbered 2:

Kissinger indicated that he accepted my assurances but that others would not. He noted that as he had informed me previously, a number of high-level figures in the Nixon administration were suspicious of my political views and considered me disloyal to the administration. He informed me that for a period of time he would not give me access to any of the more sensitive information regarding national security matters. That way, he stated, if any information leaked, I could not be blamed.

Then Dr. Kissinger's affidavit, paragraph 8, appearing on page 7 thereof, is the next tab, 25b. He states:

As a result of this position, which he held until September 20, 1969, and as a consultant to the National Security Council until May 13, 1970, Dr. Halperin received extensive exposure to classified information much of which remains confidential to this day.

He goes on to describe Dr. Halperin's involvement in the organization, preparation, and processing of national security policy reviews, and the like.

Mr. WALDIE. Mr. Chairman?

Mr. BROOKS. Mr. Waldie.

Mr. WALDIE. Mr. St. Clair, may I ask, is the information about Dr. Halperin having had exposure to classified information that remains to this day, is that relevant to the period of time in which his phone was tapped after he was no longer employed by the National Security Council?

Mr. ST. CLAIR. Yes, sir, it is. The tap on his phone was continued, I think, for a very extensive period of time.

Mr. WALDIE. And it is your view, because there is still material that is confidential, the tap can be applied today?

Mr. ST. CLAIR. Yes; but my answer should not infer that I have any information that it is still in effect. I do not know one way or the other.

Mr. WALDIE. I understand that, but that is the relevance of that conclusion. I appreciate that.

Mr. ST. CLAIR. Thank you, sir.

Dr. Kissinger's affidavit goes on further to describe, as I said, Dr. Halperin's exposure to various matters. Then, in paragraph 8, Dr. Kissinger states:

Dr. Halperin's name and the names of other individuals were provided to the Federal Bureau of Investigation for their investigation. On May 13, 1969, I received a letter from Director Hoover indicating that on the basis of the independent information available to him, it appeared probable that recent leaks had come "from a staff member such as Morton H. Halperin of the National Security Council". Director Hoover further stated specifically that "we should not ignore the possibility that Halperin \* \* \* could be the source of a leak" and that he therefore had alerted the Bureau's most sensitive sources (i.e. electronic surveillance).

In paragraph 10. Dr. Kissinger goes on to state:

However, notwithstanding the investigation of Dr. Halperin and others being conducted by the Federal Bureau of Investigation, and additional governmental efforts to curb the unauthorized disclosure of classified information, press leaks involving Southeast Asia, SALT, the Middle East, NATO, and other national security matters continued through 1969, 1970, and 1971. Such disclosures necessitated issuing a memorandum on May 23, 1970, to several Government agencies regarding the SALT negotiations in which I stated that—

And then he sets forth his statement that—

Vital national interests are being jeopardized by leaks to the press concerning the Strategic Arms Limitation Talks. No one in the Government is authorized to divulge the United States or Soviet positions to the press or to speculate concerning U.S. intentions with respect to the negotiations.

The President has directed that immediate steps be taken to insure that standing directives concerning leaks are adhered to without exception by personnel under your jurisdiction. Prompt and severe disciplinary action is to be taken in the event of violations.

He continues:

Throughout this period, leaks of information which could have serious adverse effects upon our national security and our relations with our allies continued.

11. From the commencement of the electronic surveillance of Dr. Halperin in May of 1969 until May 1970, I was provided periodic summaries of the information gained from this surveillance of conversations which the FBI determined to involve national security. However, in later May of 1970, it was decided that such reports would be directed to the office of Mr. H. R. Haldeman, then an Assistant to the President, and that Mr. Haldeman would advise the President, General Haig, then an Assistant on my Staff, or myself, of information that required our attention. In addition, an informal liaison was maintained between Mr. Sullivan of the Federal Bureau of Investigation and General Haig of my staff, and if the surveillance of Dr. Halperin developed information of sufficient gravity, Mr. Sullivan would call General Haig and either inform him of that fact or call his attention to the fact that a report containing that information had been sent to Mr. Haldeman. I remember only one such event, but there may have been others.

Tab. 26.

Mr. McCahill. [Mr. McCahill then read tab 26, which was subsequently removed from the presentation on behalf of the President.]

Mr. ST. CLAIR. In support of this, we have a document entitled "sensitive coverage for the White House from the Acting Director of the FBI," dated June 25, 1973. I hope and believe that names have been deleted in the same manner that the special staff has adopted. I do not know that I could represent the same letters that we used, that the same individuals are represented by similar letters used by the staff. I do not know that it makes much difference.

This document purports to review all of the materials derived from the taps here in question and is useful for that purpose, since it brings together in sort of summary form the findings from the various taps. I think that I should suggest that it would be quite appropriate that if the members of the committee agreed that they should remove this report from their book and give it, or keep it secure, I do not think that the Federal Bureau of Investigation likes to read about its reports in the public press. I think it has a disquieting effect on them and I would request that that be done by the members of the committee. I think the special staff would join with me in that suggestion.

Mr. JENNER. Yes, we do.

Mr. SARBANES. Mr. St. Clair, could you identify for us again the reports that you want us to remove?

Mr. ST. CLAIR. I would like this entire report and take it out of your book.

Mr. SARBANES. Tab 26a?

Mr. ST. CLAIR. Tab 26; yes.

Mr. BUTLER. All tabs following 26?

Mr. ST. CLAIR. Yes, please.

Mr. BUTLER. Mr. Chairman, do I understand that the request is that he wants these items returned?

Mr. BROOKS. No; I think counsel's suggestion was that the members take special care that section 26 was not leaked when it is released to the press, that it might be disadvantageous.

Maybe I paraphrased that a little. His suggestion was that you take it out and keep it separately, or certainly that we take special care not to release this particular tab.

Is that the thrust of your suggestion?

Mr. BUTLER. Mr. Chairman, the reason I am a little incredulous here is because I thought that these books were subject to our rules of confidentiality already.

Mr. BROOKS. Oh, of course, all of this material is, according to the Washington Star-News.

Mr. RANGEL. Mr. Chairman?

Mr. BROOKS. Mr. Rangel.

Mr. RANGEL. Could I suggest to the Chair that we turn this material back over to Mr. St. Clair in view of the reports that are in the Washington Star-News and the fact that the credibility of this committee is being jeopardized on the floor and before the general public? I would suggest that we just turn in tab 26 and anything else that Mr. St. Clair wants to make certain that the credibility of this committee is not adversely affected by leaks.

Mr. MAYNE. Mr. Chairman?

Mr. BROOKS. Congressman Mayne.

Mr. MAYNE. I certainly join and support Mr. Rangel's suggestion, which I think is very sound.



Mr. JENNER. Mr. Chairman?

Mr. BROOKS. Mr. Jenner.

Mr. JENNER. Might I suggest that the committee consider that the material be turned over to the special staff and we will retain it in our quarters over the congressional annex in the event any member wants to examine it.

Mr. ST. CLAIR. I think that is an appropriate suggestion, Mr. Chairman, that it be turned over to your staff.

Mr. BROOKS. Without any objection, gentlemen, if that is the case, we can turn the contents of tab 26a over to our impeachment staff and they can retain it there for their future use.

Mr. SEIBERLING. Mr. Chairman?

Mr. BROOKS. Mr. Seiberling.

Mr. SEIBERLING. Will we not then be hearing from Dean Burch or somebody that the staff will then be leaking?

Mr. BROOKS. We can't even get any informatiton out of that staff, everybody knows that.

Mr. ST. CLAIR. They already have, Mr. Chairman, most of this.

Ms. HOLTZMAN. Mr. Chairman, I would like to ask Mr. St. Clair, if I might, why the last paragraph was included in the statement of information? I think its relevance to this inquiry remains to be shown to me and it may endanger a person's rights.

Mr. ST. CLAIR. May I respond, Mr. Chairman?

This bothers me somewhat, too. However, I thought it would be appropriate to put it in for this reason, that the personality of individuals entitled to sensitive material has always been considered to be a relevant fact, that if a person entrusted, for example, with highly sentive materials has personal habits—let us say he drinks too much or something like that—that is thought to be in intelligence circles a relevant fact. I, therefore, concluded that I would make this brief reference to show that some of the material developed by the taps related to the general reliability of the individual or individuals involved.

Ms. HOLTZMAN. Mr. Chairman, just to follow that point up, because I am personally troubled about this inclusion.

Mr. St. Clair, I might not differ with you if that in fact were the statement of information in the tab. But the statement of information in the tab relates to somebody who used a telephone in the home of a National Security Council employee. Therefore, I do not understand the implication. I would suggest to the chairman that this tab be reviewed and the statement of information revised before it gets to the press.

Mr. ST. CLAIR. Well, Ms. Holtzman, may I only say this: I am sure that the staff will make the particular report available to you with the names in it if you have interest. I think this is about as innocuous a reference as I could possibly make, as I share your view of sensitivity about individuals. The report itself is rather extensive and is, in my view, unambiguous regarding the matters involved in it.

Mr. SARBANES. Mr. Chairman?

Mr. BROOKS. Mr. Sarbanes.

Mr. SARBANES. I want to be sure I understand the paragraph. Is that a telephone of a former member of the NSC was being intercepted? Is that correct?

Mr. ST. CLAIR. Well, sir, I would like to say this: It would be difficult for me to avoid identifying the individuals if I answered that question. I would suggest that the members of the committee avail themselves——

Mr. SARBANES. The individual who made the call and who made these references to a party was in it, either before or then, an NSC employee. Is that right?

Mr. ST. CLAIR. Well, I would like to not, Mr. Chairman, answer the question and simply make reference to the report itself. When you see the report, I think you will see why it would not be appropriate for me to answer the question.

Mr. BROOKS. Mr. St. Clair, was there any question about sections other than 26a?

Mr. ST. CLAIR. I think, sir, that the whole tab ought to be returned to your staff.

Mr. DANIELSON. Mr. Chairman!

Mr. BROOKS. Mr. Danielson.

Mr. DANIELSON. I just want to be sure I understand.

The way I understand it, we retain tab 26 itself but not the subtabs. Is that correct? Or does the whole thing go back?

Mr. ST. CLAIR. I think the whole thing ought to be turned over if that meets with the committee's approval.

Mr. SEIBERLING. Mr. Chairman. I assume I am recognized.

Mr. St. Clair, is it your thought that eventually, tab 26 would be included, if we publish all of this material, that tab 26 would also be published?

Mr. ST. CLAIR. Mr. Chairman, I think that is a decision of policy that the committee is going to have to make. I am sure your staff is competent to advise you in that regard. I am certain that I would act in accord with their advice.

Mr. SEIBERLING. Well, if it is, then I would make a point of order that the first paragraph thereof is another one of these conclusions which I would raise a point of order on and insist at least that it be footnoted that an objection had been raised to it that it is a conclusionary statement rather than a statement of primary evidence.

Mr. WALDIE. Mr. Chairman?

Mr. BROOKS. Mr. Waldie.

Mr. WALDIE. Mr. St. Clair, just as a matter of procedure, on the tabs, I notice there is—some of the letters go directly from Sullivan to the President, others go from Sullivan to Haldeman. Is there anything that indicates why it would go to Haldeman rather than Sullivan—I mean rather than the President?

Mr. ST. CLAIR. I am sorry, sir, I do not know.

Mr. DRINAN. Mr. Chairman?

Mr. BROOKS. Father Drinan.

Mr. DRINAN. Mr. St. Clair, in the previous information that we received about surveillance by electronic means of 17, it was also clear that in some instances, there had been physical surveillance, that FBI agents had followed certain individuals? In the material here under this tab, are there references to that?

Mr. ST. CLAIR. I do not know, Father, I would have to look through it. This is a summary report. Much of the material had already been submitted by the special staff.

Mr. DRINAN. I think it is an essential point, because the telephone surveillance may be justified by law or by nonlaw, but I do not think that the other could be justified. I think if we have to turn this in to the staff, I would like personally to have some indication of whether there is information that we should have about physical surveillance.

Mr. ST. CLAIR. I think in the special staff presentation, sir, they had information regarding physical surveillance in their presentation.

Mr. DRINAN. I would like to have that confirmed in your brief or disputed.

Mr. ST. CLAIR. I am not in a position to dispute it.

Mr. EDWARDS. Mr. Chairman?

Ms. HOLTZMAN. Mr. Chairman?

Mr. BROOKS. Ms. Holtzman.

Ms. HOLTZMAN. I would like to ask the Chair, and through the Chair, Mr. St. Clair, that in view of the lack of any documentation of the connection between this individual, who may be somebody who walked in off the street and used his telephone, to the Government or to this former NSC employee, because it involves a purely personal matter, that it be stricken from the record.

Mr. ST. CLAIR. I assure you, Ms. Holtzman, it is not an individual who walked in off the street.

Ms. HOLTZMAN. There is nothing in the tab to support that and I would suggest to the Chair that that be stricken from the record.

Mr. DENNIS. Mr. Chairman?

Mr. ST. CLAIR. The report itself is with the staff and I just do not want to mention the man's name, but I will assure you it is not a person unrelated to the event here described.

Mr. BROOKS. The gentlewoman from New York, your suggestion was that it was not fully justified and the documentation did not reveal exactly the details of it, even that which we have turned in to the impeachment staff for their vaults?

Ms. HOLTZMAN. That is correct, Mr. Chairman, and it does not support the basic thrust of this tab.

Mr. DENNIS. Mr. Chairman?

Mr. BUTLER. Mr. Chairman?

Mr. BROOKS. The gentleman from Virginia, Mr. Butler.

Mr. BUTLER. I just felt that the ruling of the Chair earlier, the earlier Chair, that points of order of this nature would be deferred until the presentation had been completed—we have already taken some 15 minutes on this dead horse here and I would think it would be more appropriate to take this up when Mr. St. Clair completes his presentation.

Mr. BROOKS. I thought the gentlewoman had in mind a suggestion that perhaps the counsel would accede to and might strike that without the formality of a point of order.

Mr. DENNIS. Without all the other ramifications of points of order.

Mr. BUTLER. He has declined to do that, so can we move forward.

Mr. BROOKS. Has the gentleman declined to remove that? Is that the thrust of your feeling?

Mr. DENNIS. Mr. Chairman?

Mr. BROOKS. Let him answer it.

Mr. ST. CLAIR. What was your feeling on that, sir? Your response?



Mr. ST. CLAIR. I think, sir, if I understand the question, that the entire tab 26 should be removed and delivered to your staff. So that everyone understands, the individual reports which this report intends to summarize are already in the possession of the staff, all of them. We both got them from the same source. If any one member is interested in the identity of anyone or more of these people, I believe the special staff has the actual document with the names in it.

Mr. BROOKS. Does the gentlewoman understand that? Does that satisfy the gentlewoman's inquiry? The information would be available if you wanted detail on it.

Ms. HOLTZMAN. In that event, Mr. Chairman, it really does not satisfy me and I will reserve my point of order now.

Mr. DENNIS. Mr. Chairman?

Mr. BROOKS. The gentleman will proceed—pardon me. Mr. Dennis.

Mr. DENNIS. We are talking now not about removing the material from the book, which is one thing. What Ms. Holtzman is trying to do is strike from the record a particular paragraph and obviously, that cannot be done until we get here to look at it. Counsel has said three times, at least, that when we do that, it will be all too apparent that it is relevant. We cannot strike anything out until we take a look at it.

Mr. BROOKS. I would make clear to the gentleman that this seems to be obvious now and we are proceeding on with the presentation.

Mr. ST. CLAIR. Mr. Chairman, I would like to call the attention of the members of the committee to 26k, the very last item, a personal memorandum dated May 29, 1969, from Mr. Sullivan to Mr. Hoover, in which he states:

Dear Mr. Hoover. I thought you would like to know that Colonel Alexander Haig called me this morning to advise that they are releasing X today. At least this is one leak that will be stopped.

Respectfully, submitted.

Mr. EDWARDS. Mr. Chairman, on that point, I am afraid I must ask a question.

Mr. BROOKS. The gentleman is recognized.

Mr. EDWARDS. Mr. St. Clair, you have taken care of X and Y now, and N. M. L, and with R the subject of surveillance by the FBI. X left how much later? What I am trying to establish if possible is what happened to these people? Did they all get fired?

Mr. ST. CLAIR. Well, sir, we have documentation that that one was fired. That is this document I just read to you.

Another had his security clearance lifted or he was removed from access to secure materials. We have no more documentation as to what, if anything, happened to any of the others.

I must say, I must comment that documentation in this whole area is hard to come by.

Mr. JENNER. Mr. Chairman?

Mr. BROOKS. I would suggest or ask Mr. St. Clair to recheck his information that he just stated to the committee because our information is that no action was taken. That was the presentation we made in an earlier book.

Mr. ST. CLAIR. I will discuss that with staff counsel and I think I can satisfy them who was discharged and that this memo is factual.

Mr. BROOKS. Fine. Will the gentleman proceed.

Mr. ST. CLAIR. Tab 27.

Mr. McCAHILL. A letter dated September 12, 1973, from Attorney General Elliot Richardson to the Senate Foreign Relations Committee referring to the placement of these 17 national security wiretaps stated that "The Department of Justice scrupulously observes the law as interpreted by the courts."

Mr. ST. CLAIR. This letter is set forth as part of the record of the nomination of Henry A. Kissinger to be Secretary of State. It is addressed to the Honorable J. W. Fulbright as set forth in the tab over the signature of Elliot Richardson, then the Attorney General. Tab 28.

Mr. DRINAN. Mr. Chairman, point of order.

Mr. BROOKS. Father Drinan.

Mr. DRINAN. Mr. St. Clair, did the Attorney General of the United States at that time know of all the irregularities and the failure to observe the law in connection with these wiretaps? Is there evidence that he did not know that they are not in the usual place, that they had not observed the law that says that you have to check them?

I suppose underlying the question is did the administration take the position that on warrantless national security taps, they should follow the same procedural rules that are specified for other ordinary taps?

Mr. WIGGINS. Regular order, Mr. Chairman. That is arguing the law of a conclusionary nature.

Mr. BROOKS. Can counsel answer the question?

Mr. ST. CLAIR. I do not know the extent of Mr. Richardson's knowledge. His letter speaks for itself.

Mr. HOGAN. Mr. Chairman?

Mr. BROOKS. Mr. Hogan.

Mr. HOGAN. The gentleman from Massachusetts is wrong on his facts. There are two different standards for wiretaps, one on the basis of executive order and the other criminal cases which require a court order. The statute itself—

Mr. DRINAN. Will the gentleman yield?

Mr. HOGAN. I will yield when I finish my statement.

Mr. DRINAN. The statement is wrong. I asked a question on precisely what you are saying.

Mr. HOGAN. I believe I have the time, Mr. Chairman.

Mr. BROOKS. Gentlemen, the committee will recess until we vote on this vote. I would suggest to Mr. St. Clair that on 28, in several of the books, there is no backup data.

I regret that you have another 15 minutes sitting here.

Mr. ST. CLAIR. That is by design, sir. We have only cited authority here and since everyone here is a lawyer, I am sure they can find the case themselves if they do not already know, and I am sure they do.

Mr. BUTLER. Mr. Chairman, is counsel going to pick up our tab 26 while we are gone?

Mr. THORNTON. Mr. Chairman, may we return tab 26 to the staff?

Mr. BROOKS. Do you want to do that on our return?

We will come back.

[Recess.]

The CHAIRMAN. The committee will come to order.

Mr. St. Clair will proceed.

Mr. ST. CLAIR. Mr. Chairman, tab 28. Mr. Chairman, this is simply a citation of authority of some two cases.

The CHAIRMAN. Mr. St. Clair, would you withhold a moment please?

Mr. ST. CLAIR. Certainly.

Mr. OWENS. Quite briefly, Mr. St. Clair, tab 27 referring to the hearings before the Foreign Relations Committee states that the statement of Attorney General Elliot Richardson as I read it, refers to the placement of 17 national security wiretaps, and says "then current Department of Justice policy." As I read that, it does not appear to refer to the 17 wiretaps at all. Is that a misunderstanding on the part of the tab or my reading of that statement by the Attorney General?

Mr. ST. CLAIR. Well, I would hate to say that it was a misreading on your part.

Mr. OWENS. Go ahead. We have accused you of the same thing from time to time.

Mr. ST. CLAIR. You are free to do that and I am not so free to do that.

Mr. OWENS. I would refer you to paragraph 3 of the Attorney General's letter.

Mr. ST. CLAIR. The paragraph that begins "The Department of Justice scrupulously observes the law as interpreted by the Courts?" That paragraph?

Mr. OWENS. Is it your position that that sentence refers to the 17 wiretaps?

Mr. ST. CLAIR. That is our belief, yes, sir.

Mr. OWENS. Well, that appears to me to be the opposite.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. St. Clair, why did you not mention in this presentation the tap put on by Caulfield, ordered by Ehrlichman on the Joseph Kraft home in June 1969?

Mr. ST. CLAIR. I don't believe we have any additional evidence or material other than what was supplied by your staff, sir.

Mr. EDWARDS. Thank you.

The CHAIRMAN. Mr. St. Clair.

Mr. ST. CLAIR. Tab 28 as I said, 28 is simply a citation of authority of two cases. We did not deem it necessary to attach a copy of the cases since I am sure they are available to all members who may be interested in them. Tab 29.

Mr. McCAHILL. After the termination of these 17 taps, the Supreme Court stated that the legality of foreign policy warrantless wiretapping was an open question. Attorney General Richardson has indicated that under these circumstances the Department of Justice can reasonably rely on decisions of lower courts in justifying these wiretaps. Under current legal standards, warrantless foreign policy wiretapping is legal.

Mr. ST. CLAIR. I would cite especially the *Butenko* case [United States v. *Butenko*, 494 F. 2d 593 (3d Cir. 1974)] which was decided in the third circuit this year which I believe supports the last sentence of this tab.



Tab 30, from this point on, Mr. Chairman, we are dealing with the so-called 18½-minute gap on the June 20 tape and I have asked Mr. McCahill to deal with this since he has more personal knowledge of it than I.

Mr. McCahill. On May 31, 1974, the court appointed panel of experts filed their final report on the 18½-minute gap on the June 20, 1972, EOB tape. One of the bases supporting the panel's final conclusion is the assumption that the Uher 5000 recorder used by Rose Mary Woods was functioning normally when it produced the erasure and buzz on the June 20, 1972, EOB tape.

Tab 30a is page 3 from the panel's report which was provided to you last week as I recall by the special staff. The point which I would like to emphasize from this report is the panel admits making certain assumptions and undertaking the studies and the paragraph beginning on page 3, the panel states:

We assumed, in the absence of data to the contrary, that the equipment was functioning more or less normally when the original recording was made and when a part of it was overridden by a buzz. Most of the equipment supplied to us performed normally when we began to use it and continued to perform normally throughout our tests. A notable exception was the Exhibit 60 Uher recorder, which suddenly failed after the Panel had used it for about 50 hours. Throughout the 50 hours the recorder gave no indication of abnormal operation. It responded normally to all operations of the keyboard and foot pedal controls. Recordings made on the recorder before it failed, failed to show signs of erratic operation such as arbitrary stopping and restarting of the recording or of the motion of the tape. The component that failed was a diode bridge-rectifier. We took it out, made measurements, to analyze the failure and found that one of the diodes had become short circuited. Then we sealed the rectifier in an envelope.

And they go on to say that it is now in the possession of the court.

Mr. BUTLER. Is that the recorder, the 5000 recorder used by—

Mr. McCahill. This Government exhibit 60 was the Uher 5000 purchased on October 1 for Rose Mary Woods.

Mr. BUTLER. Thank you.

Mr. McCahill. The panel goes on to say:

We placed little emphasis on finding the exact source of the buzz except to note that it resembled powerline interference and the Exhibit 60 Uher was especially sensitive to such interferences.

Now, the members of the committee should have before them for the next tab a report of Home Services, Inc., and a report of Dektor Counter-Intelligence and Security, Inc. Tab 31.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Would it be inconvenient, counsel, to submit some supplemental data with respect to the competence of these two sources that we can analyze their technical capability to make the conclusions which they draw? I know nothing about either one of these organizations, but I am concerned about the letterhead of one of them.

Mr. McCahill. Yes, sir. These two reports, Congressman Wiggins, were filed with Judge Sirica on May 31 by Charles Rhyne, who is attorney for Rose Mary Woods. The White House did not retain either one of these outfits and as of this moment we do not have a lot of information about them except that Mr. Rhyne does rely on them and this is a public document. We will attempt to find out whatever we can, however.

Stanford Research Institute, Dektor Counter-Intelligence and Security, Inc., and Home Services, Inc., believe that the Uher 5000 was malfunctioning at the time of the erasure on the June 20, 1972, EOB tape was produced. They also disagree with the panel's conclusion that the erasure was produced exclusively by keyboard manipulation and not by internal machine malfunction.

If I can direct your attention to tab 31a, which is the report of the Stanford Research Institute which was retained by the White House. They say on page 3:

We were uncomfortable with the degree of certainty expressed in conclusion four. This conclusion implied that all segments of the erasure were necessarily the result of manual operation of the keyboard controls. Our reservation about this conclusion was based on our belief that the tape recorder in question was electronically faulty at the time when the erasure was produced.

Now, on page 4——

Mr. BUTLER. Whose report are you reading from?

Mr. McCAHILL. This is the report of Stanford Research Institute and Dr. Michael Hecker. It is tab 31a.

Page 4 of that report, which is part 3 of the report, there begins a 2-page discussion of possible machine malfunction. SRI points out that they do believe that the exhibit 60 was faulty when the erasure was produced and they cite several of the reasons for that conclusion. At the bottom of page 4 they go on to say that:

At the beginning of the test program the panel was unable to use Government Exhibit 60 to reproduce the buzz signal contained on the evidence tape. Later on the machine failed to operate and the trouble was traced to a defective bridge rectifier in the 30-volt power supply. After this component was replaced, the panel could no longer reproduce the buzz signal. This observation suggests that the power supply may have been faulty in some response when the erasure on the evidence tape was produced.

Point two, the buzz signal on the evidence tape exhibits several unexplained erratic variations in amplitude. These amplitude variations were probably caused by an intermittent condition in the power supply of the machine.

Three, 12 click marks were found on the evidence tape. The panel mentions these click marks in its report but offers no explanation as to the origin of these electrical transients. Perhaps the transients came from the power line, but a more likely explanation is that they were caused directly or indirectly by a faulty power supply in the machine.

The panel goes on again to conclude that the erratic behavior of the machine in switching activities could account for some of the marks observed on the evidence tape.

Now, I would like to now direct your attention to the Dektor report, the bottom of page 1, designated 41 on the upper right hand corner. As I say, we have examined the report and the technical investigation conducted by the panel.

Mr. BUTLER. Where are you?

Mr. McCAHILL. I am on the Dektor report. It is the first page but it says 41 in the upper right hand corner.

Mr. SEIBERLING. What tab are we talking about?

Mr. McCAHILL. At tab 31b you will find this also reproduced, I'm sorry. Tab 31b, page 42 is reproduced and the bracketed material is the part that I would like to call your attention to.

"Evaluation of the information contained therein" referring to the panel's draft report on May 3, "has allowed us to take a considerably stronger position. It allows us to state with confidence that the panel's

conclusion concerning keyboard manipulation cannot be valid and a reasonable hypothesis based on power supply malfunction has become probable."

Mr. RANGLE. Excuse me. What tab are you reading from?

Mr. McCAHILL. I am at 31b. There is only 1 page at 31b.

Mr. RANGLE. There is no letterhead or where does 31—I'm sorry, Mr. Chairman.

Mr. McCAHILL. Tab 31b is a reproduction of the second page of the Dektor report which, Congressman, you should have before you in its entirety.

Mr. RANGLE. Do we have anything in connection with where this—I know this report is filed in court on behalf of Miss Woods and in your presentation do you have anything to verify who these outfits are or is this just coming out of the court records to rebut the 18-minute gap?

Mr. McCAHILL. The Dektor report and the Home Services report, Congressman, are just supplied for the committee's information to show that there are three separate institutions which disagree with the expert panel's conclusions. We did not retain Dektor and we have very little information about them. We are just supplying it because it is a contrary opinion which the panel or the committee should be aware of.

Mr. RANGLE. This panel we talk about, is this the same panel where the White House made recommendations and other people made recommendations too?

Mr. McCAHILL. That is correct. That is Judge Sirica's panel, court panel.

Mr. RANGLE. This is to rebut the panel's findings?

Mr. McCAHILL. That is correct.

Mr. RANGLE. Thank you. I'm sorry. Thank you, Mr. Chairman.

Mr. McCAHILL. At tab 31c is an excerpt or a reproduction of the first page of the Home Services, Inc. report. This report was also filed with Judge Sirica in its entirety by Mr. Rhyne on behalf of Rose Mary Woods. The part of this report I would like to call your attention to is especially the 4th and 5th paragraph on the first page.

In our report we will be primarily concerned with the tape recorder function (or malfunction) which could have caused the 18½ minute gap and the buzz on the June 20, 1972 tape. Specifically, it is our conclusion that with the Uher 5000 tape recorder malfunctioning in the manner described in IV below, with the record button in the up position and the foot pedal being used to operate the tape transport system, both an erasure and a 60-cycle buzz can be placed on the tape leaving the marks and other data substantially as described in the panel's draft report. Thus, we take issue with the panel's conclusions three and four that keyboard operation was necessary to produce the evidence tape in the condition described by the panel, and that the production of the gap and buzz required several segmented stops and starts involving keyboard operation.

The advisory panel on tapes assumed no malfunctioning of the Uher recorder. There is no evidence that the panel tested for any of the malfunctions which it has been our experience are common in tape recorders. Our report indicates only one of the possible malfunctions which could produce the data described by the panel. We are not prepared to rule out other malfunctions producing the same results which we did not have time to fully investigate.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Is it the intent of the last sentence in tab 31 that all of these tabs, a, b, and c of these various companies that you have



alluded to, all take the position that the erasure was produced, could have been, exclusively by internal machine malfunctions?

Mr. McCahill. Stanford Research's report does not go quite that far and I can provide it to you in its entirety.

Ms. Holtzman. I am aware of that and that is why I asked the question, because it seems to me the implication of that last sentence is that they all agreed that that buzz could have been or the erasive marks could have been caused exclusively by internal machine malfunction. And I am not sure you agreed that that was the conclusion of at least the Stanford report.

Mr. McCahill. That is correct. That is not the ultimate conclusion of the Stanford people, although I believe some of the evidence already presented to you by the special staff will show that Doctor Hecker of Stanford Research does disagree or does concur in the conclusions of Dektor and Home Services that the machine was, in fact, malfunctioning, that there was abundant evidence of that.

Mr. Danielson. Would the lady yield?

Ms. Holtzman. I don't know if I can but if I can.

Mr. Danielson. I would like, in an effort to be helpful, in tab 31a, the attachment, which is page 4, the last 4 or 5 lines of the first paragraph, the panel points out that "we feel that possible internal malfunction must be kept in mind while developing an explanation for the 18½-minute erasure. The panel however, categorically rejects any hypothesis based on internal malfunction." It is the last 4 or 5 lines of the first paragraph.

Mr. Seiberling. Mr. Chairman?

Mr. Cohen. Mr. Chairman?

The Chairman. Mr. Cohen.

Mr. Cohen. Mr. St. Clair, could you tell us whether or not if you have any information as to whether Rose Mary Woods transcribed subsequent tapes for purposes of either furnishing to the court, Mr. Jaworski, or to this committee after October 1 on this same piece of equipment?

Mr. St. Clair. Congressman, may I confer just a minute?

[Short pause.]

Mr. St. Clair. I believe that she did. I think the machine was transported down to Florida.

Mr. Cohen. And brought back.

Mr. St. Clair. And probably then brought back. I think you would have to keep in mind if I may just expand a little bit, this apparently is a brand new machine. It was purchased for the purpose of listening to tapes, to take off and transcribe what was heard thereon. The buzz was put on in a different mode. It was on an erase mode and it was not its normality. It was either an erase mode or its equivalent, and that would not have been the use she put to it unless by accident, as she said she thinks she pushed the wrong button. It was not used to erase or to record anything. It was used simply to play back. That was her only, the only purpose she used it for was to play back. It was not a recording machine.

It was not to be used for recording and apparently the first time this machine was ever used was when this incident happened. And if she did in fact push down the button it would be the first time that

button had been pushed down, at least when it was commercial after the machine had been sold. Do you follow me?

Mr. COHEN. As I understand it, she did transcribe other matters that morning prior to this? We do have that tape up until the 18-minute gap, so she was transcribing up to that point.

Mr. ST. CLAIR. She is listening.

Mr. COHEN. Right. I understand the reason she got that machine is because she did not want to use the hand, she wanted to use the foot pedal, and she did transcribe that morning up to that point where she may have accidentally hit the button, but then she also transcribed after that time other tapes I assume.

Mr. ST. CLAIR. The machine was taken to Florida and she listened to other tapes thereafter but you do not need—you do not use the record button to listen. Do you follow me?

Mr. COHEN. I understand that, but she brought it back and it was at her office when the incident occurred?

Mr. ST. CLAIR. That is my memory.

Mr. COHEN. And in the Dektor report is it the conclusion that this malfunction or loss of power would only occur when the record button was down?

Mr. ST. CLAIR. No; the point of the malfunction is that when you push the thing down you shortcircuit the head and the magnetic field collapses and it makes a mark on the tape. Now there are a lot of ways to short circuit. One of those is to have the power supply defective and that would short circuit, and according to these experts, did, and that caused the magnetic field to collapse and make this mark. And so the significance of the defect in power supply interruption from a number of sources pushing the button down would cut it off by the button. Also a failure in the power supply would cut it off too.

Mr. COHEN. Did it have to be a failure of power supply only when the stop button or the record button was pushed?

Mr. ST. CLAIR. No; just sitting there could do it. This is a little extraneous, and maybe I should be forgiven for it, I don't know, but Dr. Hecker—incidentally his qualifications are set forth in the tab—produced for me the same marks on the tape that he had and I have pictures of them, and that involved no manipulation of the machine at all. But, he had duplicated the power supply, and that defective power supply clicking on and off produced these small marks in an erratic fashion. But this is a highly—I would not want to have anyone understand that Mr. St. Clair and even Mr. McCahill should be treated as authoritative on this subject.

It is a highly complicated subject matter.

Mr. SEIBERLING. Mr. Chairman?

Mr. COHEN. Thank you.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. I wonder if Mr. St. Clair could tell us whether there is any evidence that after the time when this gap occurred that Miss Woods experienced any difficulty with the machine or that it was taken in for repairs other than described on tab 30a where after the machine was turned over to the panel and it operated for 50 hours then it failed? But in order to correct the failure they had to take out the

diode, a diode and replace it. And I just wonder if any similar repairs had been made? Have we any evidence on that score?

Mr. ST. CLAIR. Well, the first thing that happened, sir, if I may, when this event happened, then the machine was altered to disengage the record button so it no longer could be used in the record mode. It could only be used as a playback as I recall it.

So, it could not possibly happen again. That was an alteration to the machine that was made after it became in evidence in the court.

When the panel of experts got the machine, they say it failed after 50 hours but they do not talk about its erratic operations during the course of that 50 hours and they make an assumption that it was operating properly during that time.

Mr. SEIBERLING. Well, is there any—

Mr. ST. CLAIR. That is where the fight or the dispute is.

Mr. SEIBERLING. Is there any evidence it was erratic during the 50 hours?

Mr. ST. CLAIR. The buzz itself is evidence.

Mr. SEIBERLING. Aside from the buzz?

Mr. ST. CLAIR. These reports set forth sir, the reasons why people thought it was erratic.

Mr. SEIBERLING. But it did not produce any more gaps during that 50 hours?

Mr. ST. CLAIR. It was never used in the erase mode again. It was disengaged and never could be used again in the erase mode.

It was only this one time and when they got it then of course in testing it they have tried, they used the erase mode.

Mr. SEIBERLING. So just to be perfectly clear, you're saying that once Miss Woods furnished that particular tape in which the gap occurred, that she did not make any effort to have the machine repaired or have it looked at by experts?

Mr. ST. CLAIR. She did not know anything was wrong with it. She did have it fixed so that you could not push down the record button, if it was an error, so that she could not make that error again and a layman looking at it would not know that the power supply electrically was clicking on and off.

Mr. SEIBERLING. Thank you.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. This reminds me that when we had this matter up before I asked the Chair and the Chair agreed that it would be very helpful if we could have that day's testimony transcribed and available and I am wondering if that has been done?

I think it would be very helpful to have to read in connection with these various reports and I would add today's too but especially before when we already did consider it. And I think the chairman agreed that it was a good idea and if we can have it I think it would be helpful.

The CHAIRMAN. Has the staff addressed itself to that request that we made at that time?

Mr. DOAR. It is in the process of being assembled and we will have it to the members.

The CHAIRMAN. Mr. Railsback.



Mr. RAILSBACK. Mr. Chairman, I wonder if our staff has had a chance yet to go over the tapes and the transcripts to make any corrections that have been suggested by members and that was something that was going to be done. And I also wonder if we have a list of the witnesses that you have interviewed because some of us want to think, some of us are going to want to go over and read the interviews.

Mr. DOAR. We have a list of them, of the persons that have been interviewed and that is available for you.

With respect to the corrections, a staff member, the man that has been consistently handling the listening to the tapes, has gone through every member's book and noted every change or correction in the book and gone back and sought to verify the accuracy of that correction and new transcripts have been made utilizing the benefit of any suggestions that any member of the committee has made.

Mr. RAILSBACK. May I just at this point call your attention to that March 21 second conservation I think, where several of us were over there and I think it has been pointed out to you and I think they are waiting to get your approval before they can change that.

That is what I have been told.

Mr. DOAR. No, no. It's been changed.

Mr. RAILSBACK. Has it been changed?

Mr. DOAR. But the problem is that there is a serious dispute as to who spoke the words, whether it was John Dean or John Ehrlichman.

Mr. RAILSBACK. Are we talking now about the "Your blank blank feeling" or whether it's "how he's feeling?"

Mr. DOAR. Yes, the "he," the correction you suggested has been made, but the question is who spoke those words.

Mr. RAILSBACK. Oh, I see. Thank you.

Mr. DOAR. I want to say just by way of some interest that the man reported that Congressman Hungate and Congressman McClory had the best ears on the committee.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I just wonder for clarification if you could provide us with the exact time and date on which the record button was changed and perhaps you do not have to answer this now if this appears in testimony in the court.

Mr. McCAHILL. We have that information. It was several days after October 1. I do not remember the exact date but I can get it for you.

Ms. HOLTZMAN. Thank you.

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Could counsel also provide us or do you have the information as to who had the custody of the Uher 5000, some kind of a log, until the end of the Florida trip?

Mr. McCAHILL. We can provide that information but it is my understanding that that testimony to that effect is all contained in the transcript of the tape hearings before Judge Sirica. If that is going to be provided to you anyway—

Mr. OWENS. Do we have that information, counsel?

Mr. DOAR. We do.

Mr. OWENS. Would counsel then provide that?

Mr. DOAR. We will.

Mr. OWENS. To committee members or at least this one?

The CHAIRMAN. Mr. McCahill.

Mr. McCAHILL. Tab 31d is the testimony of Mark Weiss, who was one of the panel of experts on the court's advisory panel. His testimony is just inserted as additional information on the issue of whether or not the machine was, in fact, malfunctioning.

Mr. Weiss on page 25 testified that—

Now, in fact, as a kind of additional correlation of this series, during part of the testing that was going on on exhibit 60, the Uher, it failed, died on us. We opened it up and found that a BC power supply inside, a device—

Mr. RHYNE. Called a diode.

Mr. WEISS. This was a so-called diode bridge rectifier.

Then he goes on to say that there are two and the first of these two failed.

We replaced it with an identical component obtained, and the device began again to function. However, now it would not produce that buzz anymore.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Point of clarification. Mr. St. Clair said that during the 50 hours in which they tested this machine before this diode failed that it was working intermittently or was producing erratic results. Where in the testimony do we have that statement about the erratic operations? I fail to find it in any of these materials that you have given to us here.

Mr. ST. CLAIR. Perhaps I was misunderstood. I meant to say and maybe I can make it more clear that it had a potential for doing this.

The 18½ minutes could not have happened itself, that buzz would not have been on there, for example, if the machine had been operating properly and you derive that from the fact that when the power supply was replaced you could not reproduce the buzz.

Now we have testimony here on the next page that Mr. Weiss says in substance "we don't know when it started to fail. There is no way of knowing. All we know is it died on us at the end of 50 hours."

Mr. SEIBERLING. Well, is there testimony here that during that 50 hours there was a continuing buzz?

Mr. ST. CLAIR. Well, you see it was only in the erase mode for as far as we know, 18½ minutes.

Mr. SEIBERLING. Well, but I assume the 50, in the 50 hours they tested it that they had it in the erase mode?

Mr. ST. CLAIR. Well, I don't have any information sir, with respect to what their specific findings were.

Mr. SEIBERLING. It seems to me that without that this whole thing becomes a purely theoretical, speculative kind of report because we do not have any evidence that until the end of that 50 hours that it was in fact malfunctioning.

Mr. ST. CLAIR. Well, we suggest sir that during the 18½ minutes it was then malfunctioning.

Mr. SEIBERLING. Well, I know that suggestion has been made but it is rather remarkable that thereafter it seemed to resuscitate itself until 50 hours later.

Mr. ST. CLAIR. Mr. McCahill says that he would like to address this.

Mr. McCAHILL. I would like to direct your attention to the Home Services, Inc., report on page 4, roman numeral IV, No. 3. This is not

in the tab. This is in the complete Home Services report which you should have and it is page 4, roman numeral IV, No. 3. Home Services states: "We feel that as the machine was operated with the foot pedal a spurious connection closing K3 and K4" which were internal mechanisms in the machine, "could be responsible for erasing and re-recording" and then they cite an analogy:

Most people are familiar with what we are calling a spurious connection. They have had experience with flashlights that will not light until they are tapped, banged, or shaken, or with the TV tuner that will give better pictures if the tuner knob is tapped.

The significance of this statement is, as it has been explained to me, if I may be permitted, that if a recorder is failing it does not just fail and stay broken. It may, like the TV set or flashlight, intermittently work and then not work.

Mr. SEIBERLING. Well, I think that is a justifiable hypothesis. But my question is whether between the time they started to experiment with this machine and the 50 hours later when it failed that in fact there was any of this phenomenon experienced?

And I am just asking is there anything in here other than the fact that they think it is possible to indicate that it was in fact malfunctioning during that time?

Mr. McCAHILL. Yes; I direct your attention to tab 31d.

Mr. SEIBERLING. If I could point out in paragraph 3 you read they said "it could be responsible." What I want to know is, was it?

Mr. McCAHILL. Well, this is a very complicated question, and we do not purport to give you all of the answers today. Our intent today is to point out to you that there are three other institutions or experts in their field so-called who disagree with the panel of experts, and we feel that it is important that the committee have that information.

Mr. SEIBERLING. Well, I think that is legitimate. My only question is whether there is any evidence here that they have anything but a theoretical basis for the disagreement? Do they have or do we have any evidence that it was, in fact, malfunctioning between the time they started testing it and the 50-hour period?

Mr. McCAHILL. Yes, sir. Yes, sir, on page 26 of Mr. Weiss' testimony, which is tab 31d, Mr. Weiss is discussing the difficulty they had with the machine, and after he says that it failed he says at the top of the page or Mr. Rhyne asks:

So you are saying at the time you tested it this diode or whatever it was produced a different noise?

Mr. WEISS. Conceivably it was in the process of failing.

Mr. RHYNE. You don't know when the process started?

Mr. WEISS. No; no way of knowing it.

Mr. RHYNE. You don't know whether after you received it or——

Mr. WEISS. We have no way of knowing, no, because, well, from the beginning, let's say from actually the second day we began testing the device as we were able to produce this buzz.

And then he goes on to say in the next answer "The first day we couldn't. It was the first night actually."

Mr. WALDIE. Mr. McCahill, may I ask you, my tab shows that you are reading from something that is called the submission of recorded Presidential conversations. I presume that is an incorrect identification?



Mr. McCaHILL. That certainly is and that should not be in there.

Mr. WALDIE. What is that from which we are reading?

Mr. McCaHILL. This is 31d, and 31d is the testimony of Mark Weiss taken on January 15 before Judge Sirica.

Mr. WALDIE. In what case?

Mr. McCaHILL. The case is miscellaneous 47-73. The title of the case is "*In Re Grand Jury*." It is cited at the bottom of tab 31.

Mr. HOGAN. Can you repeat that, please?

Mr. McCaHILL. The name of the case?

Mr. HOGAN. Yes.

Mr. McCaHILL. "*In Re Grand Jury*," miscellaneous No. 47-73. This is a sealed transcript but I believe it is in the possession of the special staff, the entire transcript.

Mr. SEIBERLING. Well, may I ask one further clarifying point with respect to that testimony. Is it your interpretation that he was saying anything more than that they were able to produce the buzz? Is it the testimony that when the buzz occurs there can also be an erasure and in fact there was, or merely a buzz?

Mr. McCaHILL. We are not citing Mr. Weiss' testimony as an admission that the machine was malfunctioning when it produced the buzz. We are citing Mr. Weiss' testimony as corroboration of the opinions of Dektor, Home Services, and SRI that the machine was in fact malfunctioning even though perhaps Mr. Weiss was not prepared to concede it.

Mr. SEIBERLING. But Mr. Weiss' testimony is the only thing in this record that we have given us, as I see it, where he even approaches saying that it was malfunctioning prior to the breakdown of the diode?

Mr. McCaHILL. Where Weiss says that, but not anybody else.

Mr. SEIBERLING. Where else does it state it?

Mr. McCaHILL. The Stanford Research Institute report, which is tab 31a.

Mr. DENNIS. Mr. McCaHill, is Weiss one of the court panelists?

Mr. McCaHILL. Yes; he is one of the six appointed by the court.

Tab 31a on page 4 begins a discussion of three main reasons why Stanford Research believes that in fact, the machine was malfunctioning. The reasons cited by Stanford Research are based on evidence contained in data that was compiled by the expert panel themselves.

Mr. SEIBERLING. There again, it is the same Mr. Weiss. They say they are able to reprise the buzz signal, but is there anything in this evidence that indicates that during that time, in fact, it was erasing when it was not supposed to?

Mr. McCaHILL. I do not think you will find any evidence of that, No. 1, because when the panel began to test this machine, they No. 1, did not know it was malfunctioning at first, and even when it began to malfunction, they did not grasp the significance of that malfunctioning. Therefore, they did not test, which is actually one of the points we are trying to make. They did not test for evidence of what a malfunctioning machine would do to tape until after they had repaired the machine, making it almost impossible, then, to reproduce the condition that existed prior to their repair of the machine.

Now, if you look at Mr. Weiss' testimony on page 27 at 31d, he testifies as to what they did to the machine. He says:

Once again, when we opened up the machine to repair that machine we replaced the diode bridge. It is possible that something else was done, for example, it may have been a loose grounding connection which was resecured without our realizing it as we put it together again, such that it was no longer sensitive to extraneous electromagnetic pickup.

So after that point, even according to the testimony of Mr. Weiss, it would be impossible to reproduce what might have occurred on October 1.

Mr. SEIBERLING. So what they are saying is that it is impossible on the basis of this to infer that there was a malfunctioning prior to failure of the diode.

Mr. McCAHILL. That is what Mr. Weiss is saying. But as I pointed out, the other three institutions disagree with him quite strongly. Tab 32.

Haldeman's contemporaneous notes of his June 20, 1972, meeting with the President do not reflect that the President had prior knowledge of the Watergate burglary or was aware of any subsequent coverup.

Tab 32—this also should not be here. This should be a coversheet.

Tab 32a should read grand jury, miscellaneous 47-73, transcript pages 1307, 1308, I believe the special staff has and I believe already submitted to the committee the handwritten notes of Mr. Haldeman. What 1307 and 1308 are is the record where Ms. Volner read into the record what those notes are that were easy to read. They reflect that the only discussion regarding Watergate during that conversation, was erased, allegedly, during the 18½ minutes containing this information. The President states, "Be sure EOB office is thoroughly checked re bugs at all times—and so forth." These are Haldeman's notes again.

What is our counterattack? PR offensive to top this. Hit the opposition with their activities. Point out libertarians have created public what I believe is callousness. Do they justify this less than stealing Pentagon Papers, Anderson file, et cetera. We should be on the attack for diversion.

That is the only part of those notes relating to anything before the committee—

The CHAIRMAN. May I inquire, counsel, we do have in our, in the staff's presentation the contemporaneous notes of Mr. Haldeman on that day?

Mr. JENNER. Yes, we do.

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. I would like to ask counsel, here again, at this tab 32a is the coversheet, the correct one there, the submission of the recorded Presidential conversations?

Mr. McCAHILL. It should not be there.

Mr. ST. CLAIR. That covers this book. We have only one other presentation. That has to do with the President's taxes.

In this connection, since I do not represent the President personally, I was faced with the difficult problem of how I could make a meaningful presentation to this committee relating to some aspects of that matter. I concluded that it would be appropriate, perhaps, to obtain and I have obtained, an affidavit of his personal counsel, Mr. Rose and Mr. Gemmill, relating to events with respect to the audit of the joint committee and the like and I submit here with a copy of that

affidavit with appendixes, including principally in size, at least, a brief that they submitted to the joint committee setting forth the legal arguments in support of the President's position,<sup>1</sup> together with——

Mr. CONYERS. Mr. Chairman, might I just inquire about the remark that Mr. St. Clair made in which he said he does not represent the President personally?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. What did you intend to convey by that, sir?

Mr. ST. CLAIR. I intend to convey, sir, that insofar as the individual matters involving the President, like his personal income tax returns, drawing a will for him, maybe, or anything like that, I do not represent him nor do I have any knowledge, really, concerning these matters. The President has in the past and still does employ private counsel to represent him. That thus poses the problem for me, which I sought to resolve in the manner I have suggested.

Mr. CONYERS. I see, you do represent him personally in the instant matter?

Mr. ST. CLAIR. In his capacity as President of the United States. Now we get into a dialogue that I do not know is very productive.

I do not represent him insofar as he individually may or may not owe the United States any money on his personal income taxes. Perhaps maybe that is a better way of stating it.

Mr. CONYERS. But you do represent him personally in connection with the impeachment inquiry?

Mr. ST. CLAIR. I do not know that I would disagree, except, sir, that he is not personally, as distinguished from his capacity as President, because impeachment applies only to a President in this connection. It is in that capacity, no matter how we describe it, that I do represent him, sir.

Mr. CONYERS. You are not representing the Presidency in this matter?

Mr. ST. CLAIR. Well, I think I am as that is embodied in the present incumbent. I had this rather esoteric discussion I think, with a number of people. I do not know that I could shed much more light on it. I just wanted to make it clear that he has private counsel that represent him in connection with his personal income tax or those of himself and Mrs. Nixon. In that connection, I have obtained an affidavit from them.

Mr. SEIBERLING. Would the gentleman yield?

Mr. CONYERS. I yield.

Mr. BUTLER. Counsel, is this the affidavit——

Mr. SEIBERLING. The gentleman yielded to me, I believe.

Mr. St. Clair, I take it what you are saying is that you represent the President individually in this situation, but you do not represent him in matters involving his personal affairs not connected with his role as President.

Mr. ST. CLAIR. I think that is a very accurate statement of it; yes, sir.

Mr. BROOKS. Mr. Chairman?

<sup>1</sup> The materials referred to hereinafter by Mr. St. Clair are reprinted in the Statement of Information, book X, "Tax Deduction for Gift of Papers."



Mr. FROEHLICH. Mr. Chairman?

The CHAIRMAN. Mr. Froehlich.

Mr. FROEHLICH. Mr. Chairman, I note that when they removed from our books the tab 26, you wanted the summary removed. I would just like to point out that in the summary, apart from the book, tab 26 is there. Should we tear that out and give that to you, too?

Mr. ST. CLAIR. It must be late in the day, sir.

Mr. FROEHLICH. You took all the pages out of our book.

Mr. ST. CLAIR. We did not take them out.

Mr. FROEHLICH. The staff took all the pages out of our book relating to tab 26.

Mr. ST. CLAIR. Yes.

Mr. FROEHLICH. The first page of tab 26 is in our separate handout.

Mr. ST. CLAIR. I understand.

Mr. FROEHLICH. Do you want that collected and handed in, too?

Mr. ST. CLAIR. I would think, sir, it would be consistent with our suggestion to do that, too.

Mr. BROOKS. Mr. Chairman, I hate to take this time, but I feel the members should know and should be aware of the fact that a very unfortunate circumstance has occurred in this committee. It seems that today, the Washington Star-News has revealed that they have a substantial amount of information about this very important and significant testimony by our distinguished counsel for the President. They quote in the Star-News of today a long page 1 story which has a substantial jump on it inside. It has a very nice picture of you, Mr. St. Clair. They do you justice. Do well by your nice smile, a pleasant, jovial mood, they say.

In this article, I want to read one paragraph. They lay out what the lead is and go on with the testimony that has been presented and the matters presented in executive session before this committee. There is a paragraph that I found particularly fascinating in view of the comments of the last couple of weeks:

The books, with both St. Clair's conclusions and evidence he used to support his findings, were made available to the Star-News by a Republican source close to the investigation.

I thought it was interesting and I would say that I am sorry to see that the Republicans are plagued with the same difficulty that we Democrats have on occasion and I just wanted to make that crystal clear. I yield to anybody on the committee that wants to ask me anything about it.

Mr. ST. CLAIR. Mr. Chairman?

Mr. Brooks, I do not know whether you are suggesting that I delivered these books, but I tell you categorically that I did not.

Mr. BROOKS. No, Mr. St. Clair, I did not mean to suggest that or imply that. I read only the exact language in the paper.

Mr. ST. CLAIR. Well, my picture there and so forth, you know.

Mr. BROOKS. No, the picture was good.

Mr. ST. CLAIR. Thank you. I do not want you, sir, to draw any inference that because my picture was there that I had anything to do with the publication of this material. I categorically deny that.

Mr. WIGGINS. Mr. Chairman?

Mr. BROOKS. I will be delighted to yield to my distinguished and able friend from California, Mr. Wiggins.

Mr. WIGGINS. I appreciate the gentleman yielding. I want to say I share the concern expressed by the gentleman from Texas about this most unfortunate story which appeared in the Star-News. I have no knowledge whatsoever as to who may or may not have been responsible for that, but I am prepared to condemn any person who did leak that information to the Star.

I only wish to add this, that since we are making a record of these proceedings, I hope that the gentleman did not mean to condemn all Republicans when he quite generously attributed this to the Republicans. There may be a Republican who did this. I do not know who it is. But I would hope that the gentleman is not indicting everybody on this side by his comment.

Mr. BROOKS. Be sure that I am not indicting anybody. I just read what was in the Washington Star-News of today, which said that the findings were made available to the Star-News by a Republican source close to the investigation.

Now, I do not know if that is one or two or half a person. Certainly it is not me and most likely, it is not you, because you have not been in favor of releasing the material at all.

Mr. WIGGINS. I assure you it is not me, so you can dispel any doubt that you may have in your mind.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I think that most all of the members on this committee have felt some sense of guilt about what is going on because always, the leak is attributed to members of this committee and we can be identified as 38 people. And sometimes we find ourselves victim of the press as they identify the source of the information as being a Republican or a Democrat, and certainly, we only have our consciences to go by, because they think for every member of the committee, they recognize, no matter what our views are, that we lose a lot of credibility.

But since this cloud of doubt is just over everybody, and I was interested to see Mr. St. Clair come forward and say it is not him because all of us have been saying it is not us, I think it should be interesting to note that in the materials that were before us today, a White House staff member had the responsibility to study how some of the White House leaks are planted, not only in the Congress, but planted in the newspaper. It does not make me feel any better as a Member of the House or as a member of this committee that we all feel so guilty.

I just want Mr. Wiggins to know that I do not condemn the Republicans just because the newspapers have named them and I hope that some of the Republicans that found it so easy to condemn Democrats because we were named would feel the same way, that we are all in this pot together and that we are going to be judged on the reputation of this committee as well as staff that has just an obligation to represent their clients, whether it is the President or whether it is the committee.

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Mr. Chairman, we have an affidavit by the tax counsel.

Mr. St. Clair, are you going to develop that any further?

Mr. St. CLAIR. Yes, I would like to make a few comments when the committee is ready to proceed.

Mr. BUTLER. Could we return to that, Mr. Chairman?

The CHAIRMAN. I think it is appropriate that we forego these other discussions regarding matters that I think do not necessarily at this time relate to what Mr. St. Clair is discussing.

Mr. St. CLAIR. Thank you, sir.

First of all, I have obtained a copy and furnished a copy to the committee of a letter to Hon. Warren G. Magnuson from GSA, relating to the question, I think raised by Congressman Maraziti when the subject of the President's taxes was being discussed by the special staff. This is a letter dated June 4, 1974, and I would call the committee's attention to the statement appearing at the top of page 2:

It was the position of the General Services Administration, which itself has absolutely no involvement in Federal tax matters, that there had been a valid gift of the subject papers to the United States. This position was repeatedly and consistently communicated to the investigators on the Joint Committee staff and the IRS, as well as to the President's representatives. Moreover, we are aware of no disagreement having been expressed by any of these parties.

The affidavit, Mr. Chairman and members of the committee, as I say is by Mr. Kenneth W. Gemmill and H. Chapman Rose, who were employed and do represent the President individually insofar as his and Mrs. Nixon's taxes are concerned and insofar as they are related to the Joint Committee audit of the President's taxes. The affidavit I will just go through briefly because of the lateness of the hour.

They describe the employment of the firm of Coopers and Lybrand to perform a detailed audit and the fact that this was released on, as a result of the President's decision on December 3—I take that back.

Paragraph 2 says that on or about December 1, 1973, the President communicated to his counsel his decision to make public the report of the Coopers and Lybrand audit; that on December 3, 1973, they consulted with the President as to the best procedure to follow with respect to the above-described tax question, the alternatives being, A, to await events; B, the request of the Commissioner of Internal Revenue to assess a deficiency; C, to submit these tax questions for determination by the Joint Congressional Committee.

Then they go on to say that at the President's suggestion, the attorneys met in the afternoon of December 3, 1973, with the Republican leadership of the Senate and the House, listing the persons that they consulted with, to obtain their advice on the foregoing alternatives; that the consensus of this meeting, with which the lawyers concurred, was to submit the tax question to the Joint Congressional Committee in order to obtain, as they state, a prompt decision in circumstances which would rebut any suggestion that the President could control or influence the result.

I call the committee's attention to the fact that this was on December 3, 1973, in the light of the information put forth by the special staff that it was on December 7, 1973, that the IRS hand delivered a notice to reopen the President's tax returns. The purpose of this is to show that this decision was in fact made prior even to the hand de-



livery of that letter; and that the purpose of it was to rebut any suggestion, as I said, that the President could control or influence the result.

The President immediately accepted this advice and by his letter attached dated December 8, 1973, to Representative Wilbur Mills, he transmitted the request to the committee; that also on December 7 and December 8, Mr. Gemmill conducted several briefing sessions on the Coopers and Lybrand report and the tax returns for Members of Congress and the press.

He then states that a letter from the Director of the Baltimore District of the IRS to the President and Mrs. Nixon, dated December 7, 1973, announcing an intention to reaudit the tax returns for the years 1971 and 1972, did not come to the attention of the attorneys nor, as far as they are aware, to the attention of the President until after the announcement during these briefings of the President's request to the committee; and that the President received a letter from Chairman Mills dated December 1, 1973, expressing the willingness of the Joint Committee to undertake an examination of all questions.

Further then, in paragraph 3, members of the committee, the attorneys cite in some detail the relationship they had with the staff of the committee, and about halfway through, they state that shortly after the beginning of the cooperative investigation, the chief of staff expressed the preference of his staff for separate rather than joint examination of witnesses, with the understanding that the attorneys for the President, the affiants, were to be furnished promptly memoranda containing the substance of such interviews.

They then recite that such memoranda of committee interviews, although frequently promised, were not furnished to the affiants, except for delivery to the affiants on Saturday, March 30, 1974, of more than 100 pages of a partial draft marked "not final—subject to revise" of the committee staff's report 4 days before its publication on Wednesday, April 3, 1974.

They then state their opinion that as a result of this method of developing oral testimony almost exclusively *ex parte*, the President's case was not brought before the staff or the Internal Revenue Service as strongly or as adequately as would have been possible had each side developed its direct testimony in the presence of the other, subject to cross-examination.

Then, going on, the attorneys in paragraph 4 state in substance that the foregoing procedure is in substantial part responsible for the two differing views—one expressed in their tentative memorandum dated February 19, delivered to the committee staff and printed at pages A-13 of the staff report; and the other expressed in the report published by the committee staff on April 3, 1974, of the facts relating to the question whether the actions taken with regard to the Nixon pre-Presidential papers in 1969 prior to the statutory cutoff date of July 25, 1969, were sufficient to constitute a deductible gift.

The attorneys state that they remain of the view stated in their April 1 memorandum that the facts support deductions taken for the fair market value of the 1969 gift.

May I at this time interrupt and call the committee's attention to page 3 of the Joint Committee on Internal Revenue Taxation's ex-

amination of President Nixon's tax returns, and the footnote 2 at the bottom. This relates to the question as to whether or not, or the circumstances of the President's failure to respond to questions that were put to him, you may recall. Footnote 2 relates to that subject matter.

They state the fact of the matter that the staff recognizes that these questions were submitted late in the examination period, and this may well account for the fact that the staff has not yet received an answer.

They go on to state it is still hoped, however, that the answers will be forthcoming and that these can be made public.

It appears that these questions were in fact submitted I believe—well, I thought I had that in there.

March 26, was it not?

Mr. MEZVINSKY. March 22.

Mr. St. Clair, it is exhibit 8773.

Mr. St. CLAIR. That is right. And it is March 22 and the draft report was in fact delivered very early in April, as I recall it. I would suggest that it is a fair inference that the questions were indeed quite late in view of their complexity.

Now, the attorneys discussed two additional questions in paragraph 5; that is the disallowance or deferral of the capital gain. They recite that the resolution of the question involved really turns on the fair market value of the property sold and retained. This is on page 5; that the fair market value is a factual issue; that several independent appraisers stated widely varying views as to valuation; that the latest of these opinions, those of Drumm dated March 22, 1974, and April 4, 1974, attached as exhibits D and E, are the most favorable to the view that no capital gains was realized and that affiants remain of the view that there is a substantially likelihood that a court would hold that no capital gain was realized.

Next, a copy of their brief submitted, entitled, "Memorandum on the Bases Sustaining Charitable Contributions Deductions Taken in Connection With President Nixon's 1969 Gift of pre-Presidential Papers." It is an extensive memorandum and I am not going to take the time to read it now except to say I would suggest that the committee study it.

The CHAIRMAN. Is that included in the Joint Committee on Internal Revenue Taxation report?

Mr. St. CLAIR. No; it is not. A prior one was. This is the last brief filed.

The CHAIRMAN. I would like to state that while this is going to be instructive, as you suggest, that is in no way, again, a presentation of information or detailed information which this committee requires you to submit. Now, I would again suggest that this is merely presenting a position regarding the case of charitable deductions.

Mr. St. CLAIR. It is offered, sir, not to prove the matter, the truth of the matter as asserted, really, except to say that there is a difference of opinion.

The CHAIRMAN. What I am inquiring about, Mr. St. Clair, is are you offering this notwithstanding our rules as part of the presentation that you are making, knowing that the presentation is to consist of detailed information?

Mr. ST. CLAIR. Yes; I think that the brief does contain detailed information in this sense: That it is information to this committee as to the legal advice that the President's counsel gave on the issue of whether or not there is any basis for a fraud claim against the President. We all recognize, I'm sure, that legal advice is a relevant consideration in that regard. That is all it is offered for.

The CHAIRMAN. Thank you.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I note that an affidavit is submitted by President's counsel with respect to certain points, but other points are stated in the brief which are not sworn to. I was wondering, along the line of the chairman's questioning, if there were factual detailed materials to be submitted, and you chose to submit some in the form of an affidavit. It would have been helpful in the detailed factual statements that are given if the brief could have been contained in affidavit form as well.

Mr. ST. CLAIR. Well, the brief is incorporated in the affidavit. The brief, I think, largely is a legal brief. Other than that, that is all I can say about it.

Mr. Chairman, that, then——

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman. Mr. St. Clair, you know I have a personal interest in watching the tax matter very closely. I have a few questions. One is in view of your comment concerning the lateness supposedly of the submission of the questions. Am I to surmise and feel that in fact, the President will answer these questions and has he in fact answered the questions, even though it was March 22 when they were submitted? Can we assume that we can receive an answer to these questions, and if not, can I ask why not?

Mr. ST. CLAIR. Sir, I will make inquiry in regard to that.

Mr. MEZVINSKY. I would very much like to——

Mr. ST. CLAIR. I think you will have to wait until July 3, though, but I will make inquiry.

Mr. MEZVINSKY. Fine. I have a few more points.

One is do you have any evidence in this—I have gone over the affidavit—do you have any evidence or anything specifically—you tried to point out that the group, and you had this meeting with Vice President Ford, Senators Scott, Griffin, Tower, Representatives Arends, Rhodes, and Anderson. We know from the presentation we have in front of us that on November 28, Secretary Shultz was on notice that Alexander was going to bring a reaudit of the President's return. Do you have any evidence that in fact, there was a discussion about the IRS at this time?

And also, we see that on December 1, which was subsequent to November 28, the President was contacting his counsel, his tax counsel, on this matter. Do you have any evidence—and there is no indication in this affidavit—whether or not tax counsel was aware of the reaudit? The only indication is they say that on page 2, a letter that was dated December 7, 1973, but do you have any evidence regarding the fact that such reaudit activity was on notice of either the Presi-



dent or the President's counsel, let alone the people that attended this meeting on December 3? Because we do know that we had the statement by Mr. Alexander that Secretary Shultz was on notice November 28.

Mr. ST. CLAIR. Sir, I have no such information. I would only make this comment if I may, Mr. Chairman, that the purpose, I think, of this recitation of events was to show that the reason the matter went before the Joint Committee was to avoid any implication of ability to control the result, not, as might be suggested by the special staff, in an effort to run away from an IRS audit. In fact, I think, in retrospect, he might have done better to stay with the IRS.

But the point is, I think, the decision was made to request the Joint Committee to do it to avoid any implication that the President might be able to control the result.

Mr. MEZVINSKY. Then specifically, we know that there is a question on the deed regarding the transfer of the 1969 papers. Do you have any evidence regarding the authorization by the President as to Mr. Morgan signing the deed?

Mr. ST. CLAIR. Not other than the special staff has presented, and I do not recall precisely just what that was at this moment.

Mr. MEZVINSKY. Then I have two other quick points. One, do we—I would raise the point that regarding the letter sent to Senator Magnuson as to a legitimate gift, would I as a member of this committee, looking at the question of the possibility of fraud regarding the transfer of these papers, have the right to go to the Archives and personally look at those papers myself as a member of this committee?

Mr. ST. CLAIR. Sir, I really do not know the answer to that. I imagine that the matter would have to be dealt with by the Archives. I would be glad to make inquiry on your behalf.

Mr. MEZVINSKY. OK. Then there is a question that has been raised, and I would like for you to check with the President. He went into the White House in 1969, January, claiming that as his residency. There is a problem regarding State taxes. Can we find out whether or not a New York State tax return was filed by the President in 1969 for the year 1969? Could you—

Mr. ST. CLAIR. I will make inquiry. I have no information regarding it.

Mr. MEZVINSKY. The last point, Mr. Chairman, is that—Mr. St. Clair, I see that in the presentation we have in front of us, you are submitting no information or no evidence concerning the presentation we had by staff regarding the use of IRS; namely, the matter that is presently under investigation by the Joint Committee, the use of IRS regarding political enemies as well as the problem of audits for friends of the President. Am I to surmise that the information we have from staff is not to be rebutted and is to be accepted because we do not have any information from you at all during this presentation regarding these particular matters as to the political situation of IRS and possible violation or criminal statutes?

Mr. ST. CLAIR. We would rest on the special staff's presentation.

Mr. MEZVINSKY. I have no further questions.

Mr. MARAZITI. Mr. Chairman?

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, might I inquire when we might get the brief material, the so-called green book which Mr. St. Clair had previously had available and which was not given to us?

The CHAIRMAN. That will be a matter that would be presented after the complete presentation and when there is going to be a response, as we have stated, I think that that has not yet been decided and I think it would come after the completion of all the testimony of the witnesses as well.

Mr. HOGAN. Thank you.

Mr. SEIBERLING. Mr. Chairman?

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. St. Clair, I had just a couple of questions, simple ones about these materials you have given us.

Mr. ST. CLAIR. Yes, sir.

Mr. SARBANES. In the tax areas, is any of this material on the public record?

Mr. ST. CLAIR. Well, this letter to Senator Magnuson. I do not know whether it is on the public record or not, frankly. The affidavit is not, obviously.

Mr. SARBANES. I understand that. Then I have attachments A, B, and C, and then I have three letters, but one of them is marked attachment D, one marked attachment E, and one not marked.

Mr. ST. CLAIR. Which one is not marked?

Mr. SARBANES. The March 8 letter to Black on homesite value allocation.

Mr. ST. CLAIR. Excuse me, sir.

Well, my set does not seem to have it on a quick look though here. Could we examine your copy at the close and see what the difficulty is?

Mr. SARBANES. Sure.

Mr. ST. CLAIR. My attachment E is a letter to Mr. Gemmill under date of April 4, 1974, from Bowdle, Booth, and Drumm.

Mr. SARBANES. Are these not all on the public record, attachments A, B, et cetera?

Mr. ST. CLAIR. I am not familiar with what the status of this material is with the Joint Committee, sir. I can make inquiry of it.

Mr. SARBANES. We can do that.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I reserved the points of order that I wished to make with respect to various tabs, the summary pages of various tabs on the groups that they—

The CHAIRMAN. Would the gentleman withhold that for one moment? I think there are several other members.

Mr. SEIBERLING. Well, all right, but the usual late evening stampede may lose us a quorum.

The CHAIRMAN. I wanted to recognize Mr. Maraziti, who has been seeking recognition for a long time.

Mr. MARAZITI. Thank you, Mr. Chairman. I will be very brief. I have only one question or point of clarification for Mr. St. Clair.

Mr. St. Clair, in reference to this letter from the Archives, do I understand that at the bottom of the page, even though the committee or the IRS disallowed a deduction and perhaps did not make any finding on the question of the gift, the Archives refers to, in this language, "long before the onset of a tax controversy, it was the position of the General Services Administration \* \* \* that there had been a valid gift of the subject papers to the United States."

In other words, as far as they are concerned, and they are not concerned with tax matters, I understand that, they considered the papers a valid gift to them. I understand these papers were delivered on March 25 and March 26, 1969. Apparently, they do indicate that title passed, but they do not make any reference to the date or the time of passing title. Is there anything further on that, do you know?

Mr. ST. CLAIR. I think the intendment of the letter is, sir, that as far as GSA is concerned, or the Archives, there has been a valid gift. Of course, they disclaim any responsibility for any determination for tax purposes.

Mr. MARAZITI. In other words, as far as the GSA is concerned—

Mr. ST. CLAIR. The Government owns all of these papers.

Mr. MARAZITI. Regardless of tax matters and they considered the gift to be a valid gift?

Mr. ST. CLAIR. They contend they own them.

May I, Mr. Chairman, make a further response to Mr. Mezvinsky?

The CHAIRMAN. Yes.

Mr. ST. CLAIR. You asked me if we had anything further to present by way of fact inquiry. We intend to brief this issue and argue, of course, that the President, there is no showing and no evidence in any way that the President was engaged in any efforts to abuse the IRS. We intend to argue that. I did not want you to believe we were not even going to mention it again. You understand that?

Mr. MEZVINSKY. Sure, I understand that. I certainly expected that.

Mr. ST. CLAIR. Thank you.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. St. Clair, on page 3 of this document, I hear for the first time the dissatisfaction of the lawyers for the President with the Joint Committee. They state that they had an understanding that they were to be furnished promptly memoranda concerning the substance of such interviews and that the memoranda or committee interviews, although frequently promised, were not furnished to them.

Has this been submitted to the counsel and staff of the Joint Committee for the purposes of their reply?

Mr. ST. CLAIR. No, it has not, sir.

Mr. DRINAN. I would suggest, and I know that you would agree, that they should have the opportunity to respond and to give their version of this allegation that they had denied to the counsel for the President the memoranda of committee interviews.

Mr. ST. CLAIR. Well, I have no objection to having them make inquiry of them. I think it might be appropriate for the special staff to do that. I think they would have greater entree to the staff of the Joint Committee than I would.

Mr. DRINAN. Thank you.



Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I reserved points of order with respect to certain summaries contained in the coversheets to certain tabs in Mr. St. Clair's presentation.

The CHAIRMAN. That is correct.

Mr. SEIBERLING. Specifically, they are volume 1, tabs 12, 13, 14, 20, and 24; volume 2, tab 8; volume 3, tabs 2, 14, 18, and 20, 22, and 24; and book 4, tabs 18, 26, 28, and 29.

Now, in an effort to avoid prolonging this session I will not, unless somebody requests, specifically describe the particular statements that seem to me to be conclusions or findings of fact rather than statements of basic or primary fact. I will be glad to sit down with Mr. St. Clair or Mr. McCahill and point out each one, but short of their reaching, their agreeing to revise those tabs, I would like to request simply that when the tabs are printed, it be noted that a point of order has been made with respect to a particular portion of the tab, which would be footnoted that they are statements of conclusions by counsel rather than statements of primary fact.

The CHAIRMAN. The gentleman has raised these points of order and the Chair would like to state that regarding those particular points of order, I am happy to hear the gentleman also state that he would prefer that perhaps he would go over these matters with Mr. St. Clair, and if there was agreement that in some instances—because the Chair has also noted that there were obvious conclusions—that perhaps these might be reconciled so that the tabs would read properly. I would hope that that would be the case so that there would not be, and I think that the committee certainly does not want to impose any strict restrictions on the presentation of the materials, since the committee is seeking information. But I think it is important to note that this has occurred in various instances and I suppose that it may be subject to varied interpretations as tabs are prepared. But I would hope that we could do it that way; and, therefore, let it rest at that insofar as the gentleman's points of order are concerned and state that the material, however, would be presented subject to those reservations.

Mr. RANGEL. Mr. Chairman, I not only agree, but I can see how counsel for the President can try—it is difficult to distinguish the advocacy position. I understand that our staff is going to attempt to reconcile some of these differences and perhaps if they would be able to bring to the attention of President's counsel where conclusions have been reached without facts, we might be able to get a record that both sides can go on.

The CHAIRMAN. Mr. St. Clair.

Mr. ST. CLAIR. Mr. Chairman, without in any way, with all due respect, conceding that these are inappropriate, I would be very happy to meet with Congressman Seiberling and representatives of his office and the staff. To me, this is not a problem. I am reasonably confident we can come to an accommodation regarding them. I just would not want my agreement to constitute an admission on my part that this is inappropriate. I am sure we all understand that would

be so. But I will be glad to meet with them and see if we can work that out.

The CHAIRMAN. Fine. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, in the same vein as Mr. Seiberling, I would like to note for the record points of order that I have been reserving as well. I will not argue them here, but I am making them on the same basis that he is; namely, that they do not seem to be supported by the information given in the tabs annexed: book 1, paragraphs 5, 10, and 18; book 2, paragraph 10; book 3, paragraphs 15 and 24; and book 4, paragraph 26 with respect to the last paragraph.

I would again urge with respect to that last paragraph, Mr. Chairman, while I have no objection to letting Mr. St. Clair's material go forward with points of order noted, I would respectfully urge the chairman to rule that the last paragraph on paragraph 26 of book 4 not be included in any published statement of information. I have no objection to the information being in a backup tab, but I think to highlight it as it has been is extremely unfortunate and not relevant to the needs of this inquiry. Thank you.

The CHAIRMAN. I think the Chair will make the same proposition with respect to the gentlelady's points of order. I do not believe that the Chair is really in a position at this time to substitute the Chair's interpretation as to what are conclusions and what are not conclusions, except that I think they are valid points that have been raised and I would hope that they might, consistent with what Mr. St. Clair has stated before, be the case in the—

Mr. ST. CLAIR. We will be even more delighted to meet with Ms. Holtzman.

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Chairman, I do not want to belabor the point, but I would like to take 30 seconds and state—I do not know whether the chairman will consider this important.

I also raised a point of order, I think Mr. Waldie did, too, that the committee has allowed to be stated and accepted here as evidence put forth by the President's counsel transcripts of Presidential conversations of which the tape recordings are in the control of counsel's client, and that I consider that a mistake for the committee to allow that to be introduced. If the Chair rules it appropriate, I would like that objection and that point of order at least to be noted when these materials are printed.

The CHAIRMAN. Well, the Chair will again state that the presentation on the part of both staff and counsel for the President will be released, as they should be. There are some reservations in the resolution that provided for the releasing of these materials and that reservation was and is that the ranking member and the chairman use the criteria that have been used in the past concerning the question as to possible deletions. I am sure that the Chair in consultation with the ranking member will exercise great caution and discretion insofar as that is concerned.

I would like to make clear here that I think that we all have to recognize that while there may have been characterization of some of the material presented by Mr. St. Clair as summary, conclusions,

that sort of thing, I think each member of this committee is capable of making a value judgment when he has to be called upon to finally conclude whether or not the material is going to be used in that capacity.

With that, I believe that there is no further—Mr. Seiberling.

Mr. SEIBERLING. May I just make a comment that I want to commend Mr. St. Clair for making a very professional presentation here under very difficult circumstances. I think that he has conducted himself excellently.

Mr. ST. CLAIR. Thank you, sir. I would like to have the record show that I had the assistance of a number of people without which I could not have possibly done this. I would like the record to show that.

I personally appreciate, however, your comments. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. St. Clair.

This concludes this phase of Mr. St. Clair's presentation.

Thank you very much. We are recessed until 3 o'clock Monday.

[Whereupon, at 6:45 p.m., the committee recessed to reconvene at 3 p.m., Monday, July 1, 1974.]



# IMPEACHMENT INQUIRY

## Business Meeting

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MONDAY, JULY 1, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 3:25 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order. The gentleman from California.

Mr. WALDIE. Yes, Mr. Chairman. I would like to make a motion and to speak to the motion.

I move that the committee receive in executive session the testimony of witnesses called pursuant to House Resolution 803.

The CHAIRMAN. The gentleman is recognized.

Mr. WALDIE. Mr. Chairman, thus far, the committee has taken all of its evidence in executive session pursuant to a motion made by the gentleman from Massachusetts relative to the initial phase of hearing that there was a tendency, there was a possible tendency that the evidence would seem or tend to degrade and defame. I opposed the motion at the time it was made, believing that the committee should operate in open session, but I was a minority, a distinct and small minority, and the committee operated for 6 weeks receiving this evidence in executive session, to which confidentiality then attached and to which confidentiality still attaches. Then there was a motion that all of this evidence be released to the public, a motion which I supported. The evidence has not yet been released and the motion was conditioned that confidentiality remain as to that evidence until such time as it has been published.

(1867)

It would then occur to me, Mr. Chairman, that if there were reason to worry about a tendency to degrade and defame, a tendency to jeopardize pending cases by the receipt of documentary evidence as to which some prior control as to its nature and content could be exercised, that tendency or probability is exacerbated when you are receiving oral testimony of witnesses, particularly of witnesses of the nature that are on this committee list.

Furthermore, given the fact that there is no evidence that we have yet received as to which confidentiality has been removed, it does seem to me to be beyond dispute that calling live witnesses to testify as to events and to be cross-examined and direct-examined pursuant to documents as to which confidentiality applies would be absurdity. Therefore, Mr. Chairman, I move that the committee do receive in executive session the testimony of the witnesses called pursuant to House Resolution 803.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. The gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I want to speak vigorously against the motion offered by the gentleman from California. In one sense, I am surprised that the gentleman from California is the sponsor of this motion. I recall distinctly the Ford confirmation hearings in which this same subject arose and when the gentleman from California stated very eloquently that this is indeed the public's business and the public has the right to know, to see, and to hear the action that is occurring in this committee.

If that was a proceeding in which the public's business was being discussed and considered, much more so is this historic impeachment inquiry the Judiciary Committee is conducting at the present time. This is an honorable and a respectable and respected hearing that we are conducting. Yet I think the American people have misunderstood our actions and our mission up to the present time. The reason they have misunderstood is because they have not had a chance to look in and listen in as to the action we are taking here. What they have heard and what they have received up to the present time are leaks, comments, interpretations, press releases, press meetings, and briefings, and that sort of thing, which does not give a clear and accurate and true interpretation of what is going on here in our committee.

The opportunity to correct this is provided for us now with the movement to this stage of witnesses who are going to appear before our committee. Our first witness, I understand, is going to be Mr. Alexander Butterfield. He is not a witness that is going to defame or degrade or that we are going to have any problems of that nature with. Here is a witness who is going to illuminate, who is going to explain, who is going to provide information which not only the committee has a right to know but which the American public should have a right to know and they should have a right to know it directly.

I would like to suggest, Mr. Chairman, that what happened here just a few moments ago on the floor of the House is not the considered, deliberate judgment of the Members of the House; it is the suspicions of the Members of the House, because when they don't know and they don't see what is going on, they suspect the worse. That is what happened with the American people in large measure, I believe.

Now, I don't want to say this without quoting the source, and yet the source is frequently not provided, but let me say that the source is responsible, that it is charged by a representative of the media that the Democrats do not feel that they can impeach the President unless they close the hearings. Now, I deny that myself and I know that the members on your side, Mr. Chairman, deny that, deny that any such statement or any such attitude would be expressed. Yet if there is a strong vote to close the hearings, to close the doors, to give the impression that this is some kind of a star chamber proceeding or that it is prejudicial and not fair and open and above board, that kind of suspicion and that kind of attack is going to be made.

So I say this is a time for us to indicate that the people's right to know is being acknowledged. We are going to be fair to the President. We are going to be fair to the President's counsel and they have requested that these hearings be open and that we do give a chance and opportunity to the American people to be illuminated and informed with respect to what we are doing.

This is the rule of the committee. This is the trend of action in the House of Representatives, to have all of our hearings and all of our business open and above board and in public, and it seems to me we should respect that and acknowledge it and promote it by our action here today. I hope that members on both sides of our committee here will vote down this motion of the gentleman from California. Thank you.

Mr. SEIBERLING. Would the gentleman yield?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I would like to ask the gentleman from California, Mr. Waldie, a question. I wonder, Mr. Waldie, if you have the same apprehension that I think many members had when they voted to release the evidence; that is, that there might be some selected leaks which would be very distorted and misrepresentative. Do you think that perhaps we will have some selective leaks if we close these meetings like we have had?

Mr. WALDIE. No.

Mr. RAILSBACK. Do you have personal knowledge?

Mr. WALDIE. I have my own personal knowledge, Mr. Chairman.

I don't know what you are planning to do.

Mr. RAILSBACK. I would be inclined to agree with you if I had the same assurance, but I voted to release the materials that we agreed to release because the selected leaks gave a one-side picture. I am just concerned that that could happen again.

Mr. SEIBERLING. Would the gentleman yield?

Mr. RAILSBACK. I yield.

Mr. SEIBERLING. As I recall, both gentlemen from Illinois voted to close the session when we were having the documentary presentation. And of course, I suppose the argument is now that because of leaks in the past that perhaps created a one-sided picture, we should now throw the session open when we get to witnesses.

Mr. RAILSBACK. Let me explain what the reason was. The reason why I reversed my position is I thought the chairman and our staff made a very eloquent plea that we should close the meetings to preserve



the confidentiality that the staff had theretofore been able to accomplish. As soon as it came to the members, all of a sudden, there was a tidal wave of leaks.

Mr. SEIBERLING. Well, I was one of the people who took the position, which was a minority position, that at the end of each day's session of the documentary presentation, we should vote on releasing that day's material. Of course, that position was never agreed to. Now, it seems——

Mr. RAILSBACK. I agree with you. I agree with you.

Mr. SEIBERLING. It seems to me that now that we have agreed to release all this documentary material in one huge, indigestible mass, which the public can't possibly absorb in any reasonable length of time, and the only thing the public would see would be the interrogation of a few witnesses on a few narrow points, that they are going to get an equally slanted and jaundiced view of the whole proceeding, and that the only thing to do is to be consistent with the pattern that we have followed up to now. I am sorry that the gentleman from Illinois has seemed to think that there is some sort of partisan aspect to this. If you look back in the record of last year when certain members of this side of the aisle were talking about——

Mr. RAILSBACK. If I may interrupt the gentleman, I am not suggesting that there is a partisan aspect to the leaks.

Mr. SEIBERLING. No, I am talking about on this particular issue.

I was one person who opposed bringing an impeachment proceeding last summer because I took the position that we were not, we had no right to try to attack one man whom we happen to disagree with philosophically. Our only obligation when we are talking about impeachment is upholding the Constitution. And you know, politically, it might be an easy thing to do to just follow the easy way out and not worry about impeachment from the standpoint of the majority. But I don't think we should approach this from that point of view. I certainly do not and I do not think most people on the other side of the aisle do.

Mr. McCLORY. Will the gentleman yield?

Mr. SEIBERLING. It is Mr. Railsback's time.

Mr. RAILSBACK. I yield.

Mr. McCLORY. Let me just say this: I voted last week to release all of the evidence, to put it all in the public domain, and it seems to me it is entirely consistent, since we are putting the record, we are delivering the record to the public with regard to all of the hearings that we have had so far, that we would now vote also to have the hearings in the public eye.

Mr. SEIBERLING. If the gentleman will yield, the consistent thing to do is follow the pattern we have followed with respect to documentary evidence and release it after the fact, after we have heard it.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. Mr. Chairman, I was one of those people from the outset that believed that, if we kept this thing in executive session to protect innocent third people and also to do as good a job as we could,

that would be the best way to proceed, and each one of the motions that we have had, I have argued that fact. I believe yet it is the right way to do it. However, after sitting here now for some 7 months and watching some real hypocrisy in action—let's use the right word.

I do not hold the same point of view. I listen to people today concerned about leaks and the media out there knows who has been leaking. Today must be a great day for the media, because all the people will run out there to divulge everything that happens on an hourly basis. You know who they are. They are the same people now who say, oh, we have to have this in private, we are going to hold this one behind doors; the same people who said we have got to give out every shred of evidence there is, hang it out and let everybody see it, even though there may be a hundred innocent people connected with it who had nothing to do with what we are looking into. Nobody cares about that.

What about the fellow who released the most confidential of all information by turning over the whole book to the New York Times? I wonder how he is going to feel today.

Mr. CONYERS. Will the gentleman yield?

Mr. SANDMAN. No, I will not. When I am through, you will get a chance. It is about time we called this thing for what it is.

What happened about all the release of all the materials? Whoever heard of any tribunal releasing all of its information before anyone ever made a decision on that information? I never heard of that before, but this committee set a precedent. I voted against that. I didn't think it was proper.

You have made available to the media information that can harm hundreds of people who are not connected with this investigation at all. This, I think, is wrong. I have been interested in innocent third parties and I voted that way consistently. People have left this room from time to time with organized leaks, and they were organized—let's call it what it is—and none of them have been done in a sense of fairness.

Since we have gone that far, I think, too, the public has to be apprised today of what a funny change of events we have. The very same people who only days ago were saying, let's show the world everything, they are the ones who wanted everything hung out no matter who it would hurt. Why, they even argued about the right of calling witnesses. That went through a whole day of debate. We sit here for 7 months on documentary evidence. Yet the people who were there when this happened, a big argument was put up, not by this side but by that other side. And I don't think they wanted to hear any of those witnesses. Let's call that for what it is, too. We didn't have to debate 10 or 12 hours to figure out how we were going to handle those.

Now we get down to the last straw. It has been leaked by people who are objecting to the public hearing what these witnesses have to say and who have given the public the chance to listen to the leader of that witness when he testifies to whether or not the person guilty of the leak was accurate. And since we have gone down the line this far, there is only one way you can give the public a clear point of view and that is to make the remaining parts of what we have to do here public

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Chairman, I think it should be pointed out to all the members again that the motion of the gentleman from California, Mr. Waldie, is in accordance with House rules, No. 1127(m). It was worked out over decades of committee experience designed to protect the civil liberties and the privacy of third parties without whom defaming, derogatory, and incriminating testimony was to be made. Because this is an impeachment inquiry, it does not mean that the House rules go out the window. We still have a great responsibility to behave appropriately.

Right from the beginning, it seemed to me that this is the right thing more than 2 months ago when the subject first came up. I still believe it is the right way to proceed and I support and urge the approval of the motion of the gentleman from California.

Mr. MOORHEAD. Mr. Chairman?

The CHAIRMAN. Mr. Moorhead.

Mr. MOORHEAD. Mr. Chairman, I strongly oppose this motion and favor the opening of the committee to the public. Prior to the time that we turned over the materials that have been accumulated so far, I believed that the rights of individuals had a chance of being protected. But once we opened up that part of the record, most of which has been accumulated by hearsay, innuendos, collections of one kind or another by the committee staff, we gave up the right to protect individual rights and we have now a responsibility to the American people to show them just exactly what the evidence is and what the key people in this case can add to what we already have collected. I think that it is most important that the testimony that is offered by the key people that we have decided to call and by others who I hope we still will call will be made public and be something that the American people can watch as the testimony is given.

So I strongly support the opening of this committee up to the general public to give them a chance to do that.

The CHAIRMAN. Does the gentleman yield?

Mr. MOORHEAD. Yes.

The CHAIRMAN. The gentleman states that since he is concerned with the release of this material and that since this material has been voted to be released by the committee, that based on that assumption, he feels that the meeting should now be held in the open. The gentleman understands and recognizes that the rules of confidentiality still prevail until the material is actually released for publication.

Mr. MOORHEAD. I understand that, but the committee itself has lost the thrust of that fact and I am sure these materials will be released when the chairman and the ranking member decide to release them. But frankly, I think that after we have gone that far and we have decided that most of these materials, some of which are damaging, would be released, then I think that we should go wholly public.

Mr. WALDIE. Mr. Chairman?

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. I want to move the previous question. Are there others who want to debate this?



Mr. DENNIS. I am seeking recognition, Mr. Chairman.

Mr. CONYERS. Then I want to speak to the motion in support of Mr. Waldie.

I am disturbed about the nature of this debate. People say they know who the leakers are, we all know who they are, we know who turned over the papers. Well, I don't know that. Nobody has said who they are. I think that that is not the question that the support for this motion or even against it should turn on. If we are to begin examining witnesses tomorrow and the material is still confidential, I don't see how we can help but continue the examination of witnesses in closed session. It would seem there is nothing more logical.

Now, I have also heard members expressing some shock about Mr. Waldie's position. Well, they were the ones who voted the opposite way themselves and because Mr. Waldie on this point has changed his position and they have changed theirs, they ought to examine their own reversal at the same time. So I think that we ought to proceed on with a vote as rapidly as possible, Mr. Chairman, because I think most of us have thought about this over the weekend.

I yield back the balance of my time.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. Chairman, I am perfectly willing to recognize that there are valid arguments which can be made on both sides of this question. When we originally had the matter before us, I voted for executive sessions, mostly for the same reasons that Mr. Sandman did, the rights of third parties which were involved. I continue to feel that that was the best way to do it in spite of my great disgust with the leaks which did take place, and therefore, the last time we voted about making things public and publishing them, I still voted against that motion.

But I lost that motion. The committee voted to make public what we have done up to date and to publish it as rapidly as we properly can go through the mechanics necessary to do so. So that is now in the public domain.

Now, our staff was charged with the duty of investigating whether grounds for impeachment existed and they very properly went out and looked to see whether that was true or not, and they came in here and brought us the fruits of their labors, and very naturally, under those circumstances, that pretty much presents one side of the case. Now we are going to go into a phase where probably, we will be presenting somewhat both sides of the case. Had we stayed in private on the first phase, I think I would still stay in private on the second phase. But I do not think it is fair to have a double standard and now that the first phase has been made public, is going to be published. I think that the oral testimony which may cut both ways ought likewise to be made public and treated the same.

Finally, Mr. Chairman, I am convinced that that is what the people want us to do. After all, this is public business. The Chairman will recall that I sent him a letter the other day from one of my constituents, just a nice woman I happen to know who went around her neighborhood and got a petition. She wanted to make these public and she asked people she met at the bank, people she met at the grocery

store, and so on. Regardless of their views as to the merits of the case, almost all of them thought the hearings ought to be public. I think that is a reasonable factor which is entitled to consideration here.

It seems to me that to go public on one part of the evidence, private on the other part of the evidence is not fair. It is a farcical situation and because that decision has been made in the way it has, I would vote at this time to open the meeting. Thank you, sir.

The CHAIRMAN. Mr. Maraziti.

MR. MARAZITI. Thank you, Mr. Chairman. I concur with the gentleman from California that the procedure may be legal, is legal. But I do not think it is wise. We recently voted to release the material and I know, Mr. Chairman, as you have mentioned, that the material has not as yet been released and may not be released for a number of days, perhaps 1 week or 2; I don't know. But we did take the vote on a proposition that this belongs in the public domain, the material belongs in the public domain at one point or another.

Now, since that is the case there, why should we take the position that the testimony of the witnesses belongs in the public domain? I know we can close the hearings. I know that the rules provide for this. But the general thrust of Congress, of legislatures throughout the United States, is that the public has a right to know. That is the normal position—not executive session.

I know that there are some cases where you have to make exceptions, but generally and basically, this is the public's business. Impeachment is the public's business. They have a right to know.

There are exceptions as, Mr. Waldie has pointed out, in California, and others have pointed out, and I concur. There may be degrading testimony, defamatory testimony, testimony of a sensitive nature. Well, that is very simple. You can handle that. You can accommodate the public and have the information and protect the rights of individuals, protect the sensitive information. The chairman could rule. I have complete confidence in the ability of the chairman to rule and rule properly. When you come to an area that may be sensitive, we can close the session and go into executive session.

MR. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

MR. DRINAN. Mr. Chairman. I was not going to speak until the suggestion was made by someone that perhaps people are following a double standard. I am going to vote for Mr. Waldie's motion and there is no double standard involved. I have always voted for open hearings, for reasons enunciated by several members of this panel. But there is a point in the time of an inquiry when things change because of the fact that 90 to 95 percent of the entire proceeding has been concluded. There are then additional considerations. To allow one segment to go public would create distortions in the entire situation because the witnesses that we will have will speak to one or very few areas of this entire inquiry, perhaps only to Watergate.

Furthermore, all of the material will be available as soon as possible and I see no reason why this very small segment of the entire inquiry should be given preference.

MR. MCCLORY. Would the gentleman yield for a question?

MR. DRINAN. Yes.

Mr. McCLORY. I wonder if the American public is not well enough informed on the proceedings that have transpired so far so that they could intelligently interpret the testimony provided by the live witnesses? I have the strong feeling that they are that capable, they are that intelligent. Is it your feeling that they would not be able to grasp and understand what the witnesses were saying in the testimony if they heard and saw the witnesses?

Mr. DRINAN. I am sure, Mr. McClory, that they really have no idea of the vast majority of the material in the 8,000 pages that have been given to us by counsel. As long as one standard is observed, I don't think anybody should say there is a double standard being followed by certain members of this committee. The one standard for all of the testimony is this, that the evidence given in the testimony of the witnesses will be published as soon as possible; it will be published shortly after or around the time that the other 8,000 pages of this inquiry are published. I yield back the balance of my time.

Mr. DONOHUE. Mr. Chairman?

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. Parliamentary inquiry.

Is the Waldie motion in accordance with and pursuant to an existing rule of the House of Representatives?

The CHAIRMAN. The Chair would like to state that the Waldie motion is the rule of the House and, as Mr. Waldie has stated, the motion is consonant with and absolutely in accord with rule 27(m), that if the committee determines that evidence and testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session. And the committee is under a mandate and the Chair can't rule otherwise.

The Chair states that should this committee release any of this testimony before a consideration of this question deciding that it is not defamatory or degrading, and that if it were to violate this rule, all of the proceedings of this committee would then fail and all of the proceedings of this committee would be vitiated. For this reason, I think that members had better recognize that they were right when they voted originally to close the hearings when we were receiving the detailed information presented by staff of the committee and by counsel for the President. This was the right course. Whether or not there were unfortunate leaks is beside the point.

It seems to me that for that very cogent reason and for the very fact that counsel has advised us time and again that there are third party rights, that there are cases still pending, that we are operating under the rule of confidentiality, that there may be incriminating evidence of other individuals which may be brought forward—that for all these reasons, that motion should prevail, together with the fact that it is in accord with the rule of the House and the rule of the House can't be subverted.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. I recognize Mr. Owens.

Mr. OWENS. Mr. Chairman, I agree with the gentleman from New York and with the Chair that under rule 11, the committee has no alternative but to close these investigative hearings. The rule is not permissive, it is mandatory.



In that line, I would like to direct to counsel to the committee, if I might, a question as to when the materials which we have already voted will be made available will in effect be public and available? Is that information yet apparent?

Mr. DOAR. Well, some of the materials are in page proof, the remaining materials are being assembled to go into page proof. We hope that it will all be published within the next 2 weeks.

Mr. OWENS. What about the transcripts?

Mr. DOAR. They are in page proof.

Mr. OWENS. There is no publication date at this point?

Mr. DOAR. That is up to the chairman and the ranking minority member. They should take 1 day or 2 after the page proofs are back to run final.

Mr. OWENS. Does the Chair have any more precise information on that at this point?

Mr. BROOKS. Question, Mr. Chairman.

The CHAIRMAN. The Chair will state that the Chair has not yet had an opportunity to review all of the material and the material, when it is presented, will then be looked at and in accordance with the resolution adopted, screen that material and then, after the ranking member has also done the same, release it for publication.

Mr. HOGAN. Mr. Chairman?

Mr. OWENS. Mr. Chairman, it seems to me that the most important thing in terms of bringing the public into these proceedings is that the public have the opportunity of witnessing the debate in articles of impeachment which are scheduled tentatively to begin 2 weeks from today. There is pending before the House Rules Committee a resolution introduced 6 months ago which would change the House rule to permit these hearings to be televised. As I know members are aware, under the present rules, these meetings, these debates may not be open to the broadcast media, though they may be open, as is this meeting today, to representatives of the broadcast media and to print journalists. They are not available to electronic broadcasting. I submit that it is exceedingly important that at that point, where we are debating—and I will yield in just 1 minute—that at that point, when we are debating all the evidence that has been elicited in these hearings and that is before the committee and at such times as the transcripts have then been made available and the rules of confidentiality then have expired—at that point, it would be exceedingly important that the public have the opportunity of witnessing these debates and these votes on the articles of—on any possible articles of impeachment. I yield my time.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BROOKS. Question, Mr. Chairman.

The CHAIRMAN. The question is on the motion of the gentleman from California.

Mr. McCLORY. Mr. Chairman, the gentleman from Maryland was seeking recognition.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Thank you, Mr. Chairman. I just want to express my great admiration for the Chair and the majority members, in spite of how busy we have been with all the burden of work we have, that

they have had time to begin reading the House rules and have now discovered rule 11 and those who had argued so eloquently for open sessions and the public's right to know have now discovered rule 11 and changed their views.

Mr. McCLODY. Will the gentleman from Maryland yield to me?

Mr. HOGAN. I yield to the gentleman from Illinois.

Mr. McCLODY. I thank the gentleman.

I just want to say that when we adopted the rules of this committee, I offered to an amendment that the hearings, the entire hearings of this committee, would be open for television. The television industry installed the facilities for televising these hearings. Now we are coming to the very final stages of the hearings and the television media have been denied completely the opportunity to take one picture of one hearing—one session, one hearing, of one witness, of one bit of presentation, notwithstanding the fact that this assurance was provided.

It seems to me that there is a suspicion that 90 percent or more of the entire presentation that was made is already of material in the public domain; yet the public was denied the opportunity to see and hear and know about that. It seems to me that we have just performed a great disservice to our American people in closing these doors tight to the public.

Mr. HOGAN. I yield to the gentleman from New Jersey, Mr. Sandman.

Mr. SANDMAN. It seems to me one of the things about this whole ridiculous argument today, the whole thing behind this argument today, one would gather, would be that we have to keep this thing confidential, that the rules of confidentiality still pertain to this. They pertained to 2 weeks of time. That is all they pertained to. What you have voted to already release is 10 times as damaging as what these witnesses can give in the next 7 days. Now, why don't we accept that fact?

The CHAIRMAN. The question is on the motion of the gentleman from California. All those in favor of the motion, please say aye.

[Chorus of "ayes."]

The Chairman. All those opposed?

[Chorus of "noes."]

Mr. FROELICH. Roll call, Mr. Chairman.

The CHAIRMAN. A call of the roll is demanded. The roll will be called. All those in favor of the motion, please vote aye; those opposed no. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.  
 The CLERK. Mr. Eilberg.  
 Mr. EILBERG. Aye.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. Aye.  
 The CLERK. Mr. Flowers.  
 The CHAIRMAN. Aye, by proxy.  
 The CLERK. Mr. Mann.  
 Mr. MANN. Aye.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. Aye.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. Aye.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. Aye.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. Aye.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Pass.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. HUTCHINSON. No, by proxy.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.



Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTA. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

Mr. HUTCHINSON. Mr. Clerk, I vote aye.

The CLERK. Mr. Hutchinson votes aye.

The CHAIRMAN. The clerk will report the roll.

The CLERK. Twenty-three members have voted aye; 15 members have voted no.

The CHAIRMAN. The motion is agreed to.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, I have a couple of questions that ought to be brought to the attention of the committee before we begin the taking of testimony on tomorrow.

It is first my understanding, Mr. Chairman, that the committee would have available to it today a written statement with respect to the scope of the examination. Do you have any information to give to the committee in that regard?

The CHAIRMAN. I believe that we have some written scope of the examination on the part of the counsel for the President, who requested this, and I think that that was the request, I think that that is in accordance with the rules.

Mr. WIGGINS. My question, Mr. Chairman, is are we the members going to have the benefit of that statement concerning the scope of the examination? That is consistent, of course, Mr. Chairman, with the resolution passed last week by the committee.

The CHAIRMAN. The Chair does not have it at this time, but the Chair will state that the chairman and the ranking minority member have not yet—we were awaiting counsel's interviews with the various witnesses before we would provide the members with the statement.

Mr. WIGGINS. May I suggest that prior to taking of the testimony tomorrow, in accordance with the resolution adopted last week, that written statement will be made available?

The CHAIRMAN. That will be provided.

Mr. MCCLORY. Mr. Chairman, may I inquire, as a result of the action on the floor today, in which rule 11 remains intact, what is the policy, what is the procedure of the committee going to be with regard to the interrogation of witnesses? That is, I would like to know the scope and extent of counsel's role and, of course, the members. I understand the members will each have 5 minutes for the purpose of interrogating each of the witnesses. But how do you plan to do this?

The CHAIRMAN. The Chair will advise the gentleman from Illinois tomorrow morning before we proceed.

Mr. McCLODY. You mean we cannot have any advance notice so that we can——

The CHAIRMAN. The Chair will comply with the rules of the House. We will allow each member who wants to interview to interview for the 5 minutes that he is allowed under the rules of the House.

Mr. McCLODY. Will counsel interrogate the witnesses first?

The CHAIRMAN. The Chair has not yet made that determination. The Chair will consult with the ranking——

Mr. RAILSBACK. Would you yield?

Mr. McCLODY. I wonder if you could indicate to the members, Mr. Chairman, the order in which the witnesses will be called? I understand Mr. Butterfield is to be called first?

The CHAIRMAN. That is correct.

Mr. McCLODY. What is the continuation of the order, Mr. Chairman?

The CHAIRMAN. We have no further order actually set out.

Mr. McCLODY. I yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. I yield to the gentleman from California.

Mr. WIGGINS. Mr. Chairman, I have the time. I am satisfied with the chairman's answer to my first question. There are three.

The second question deals with the matter of theories of the case. I understand that the staff is to make available today, if my memory serves me, the theory on which the possible impeachment might proceed. Can I have a report with respect to whether that is available?

The CHAIRMAN. Well, I will inquire of counsel whether or not it is.

Mr. DOAR. We are working on that, Mr. Chairman. The problem this weekend has been that Mr. Jenner and I have been engaged in interviewing the witnesses that the committee wished us to interview prior to making the recommendations to the Chair and the ranking minority member with respect to calling witnesses. We should have that tomorrow at the latest.

Mr. WIGGINS. I will look forward to it tomorrow.

The CHAIRMAN. I want to advise the member who inquired as to the order in which the questioning will take place that in accordance with the rules, the Chair has no other alternative but to state that committee counsel shall commence the questioning of each witness and may also be permitted by the chairman to question the witness at any point during the appearance of the witness.

Mr. WIGGINS. Mr. Chairman, if I could conclude just briefly, will an objection lie to any question asked? If the answer to that question is yes, who may make such an objection, and who will rule on it, and is any ruling made by the Chair, I would presume, subject to review by the Committee of the Whole?

The CHAIRMAN. The Chair will refer the gentleman to the rules of procedure C-2, objections relating to the examination of witnesses or the admissibility of testimony in evidence may be raised only by the witness or his counsel, a member of the committee, any counsel, President's counsel, and shall be ruled upon by the chairman or presiding member. Such ruling shall be final.

Mr. WIGGINS. Is that a rule of the committee you are reading from, Mr. Chairman?

The CHAIRMAN. That is a rule of the committee.

Mr. WIGGINS. Mr. Chairman, I take a major exemption to that rule of the committee which, as stated by you, would give counsel for the committee or counsel for the President the right to object to questions that are asked.

But I would also call to the attention of the Chair the House rules, which indicate that the committee will be the sole judge of pertinency of all evidence. I take it that by reason of that House rule, it would be possible for a member of the committee to challenge the pertinency of evidence in that event——

The CHAIRMAN. The committee has the right to overrule at any time.

Mr. CONYERS. Mr. Chairman, if there is no further business, I move we adjourn.

The CHAIRMAN. The committee is adjourned. The committee will meet at 9:30 tomorrow.

[Whereupon, at 4:20 p.m., the committee was adjourned.]

[NOTE.—See “Testimony of Witnesses,” books I, II, and III, for testimony of witnesses heard on July 2, 3, 8, 9, 10, 11, 12, 15, 16, and 17, 1974.]





# IMPEACHMENT INQUIRY

## Executive Session

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THURSDAY, JULY 18, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to recess, at 10:25 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison, deputy minority counsel; Bernard W. Nussbaum, senior associate special counsel; Michael M. Conway, counsel; Richard H. Gill, counsel; Stephen A. Sharp, counsel; Gary W. Sutton, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; William P. Dixon, counsel; Franklin G. Polk, associate counsel; Arden B. Schell, assistant counsel; Michael W. Blommer, associate counsel; Allen Parker, counsel; and Dan Cohen, counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel; and Malcolm J. Howard, assistant special counsel.

The CHAIRMAN. The committee will come to order.

Before proceeding with the response by Mr. St. Clair, the Chair would like to make several announcements.

Following the response by Mr. St. Clair, it is hoped that we may be able to take care of a few housekeeping matters that I think can be disposed of during this morning's session. I understand that these matters, such as the release and public indication of further materials, may be disposed of under the rules at this phase of the proceeding, but it is still a hearing and doesn't necessitate a meeting.

Then there are several other matters that I would like to discuss with the members on a very informal basis, so I would hope that we would remain behind after Mr. St. Clair leaves, just to provide some information regarding some of the proposals that I have which I

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think are within the jurisdiction of the Chair to merely offer as proposals as to the procedures that are intended to be followed next week during the course of what we consider the debate on the resolution and consideration of any resolution which we may have before the committee as a committee.

I might also add that at this time, the Rules Committee is meeting to consider a change in the rules of the House providing for the allowance or permission of live television to come into the proceedings, and any member that would like to go there to express himself one way or the other, I notify him for that reason. But I am advised that the leadership has scheduled this and it is before the Rules Committee this morning. So that in the event that such a rule is adopted and the House does then formally adopt that change in the rules of the House, then the committee could properly have before it, as has been expressed by some of the members, a desire to have a resolution which would permit live television to come in to telecast our proceedings.

I mention this so that the members will know what is taking place.

Now, before calling on Mr. St. Clair, Mr. Doar, you have a matter that I think is of some importance to us to know about and then following that, I think we will hear from Mr. St. Clair.

Mr. DOAR. Mr. Chairman, I would like to report to the members of the committee with respect to the President's response to the subpoena issued by the committee on the 24th day of June, returnable on the 2d of July and actually responded to because the President was out of the country, on the 12th day of July. Briefly to refresh the members' recollection, the subpoena called for certain recorded conversations between the President and some of his key associates, particularly Mr. Colson, Mr. Haldeman, and Mr. Ehrlichman in the summer of 1971, and a conversation between the President and Mr. Petersen in April of 1973, and the President and Mr. Kleindienst in April of 1973. President Nixon declined to supply, produce the tape-recorded conversations or copies of the President's daily diaries which we requested in the subpoenas dated June 24. The President had advised the committee theretofore that that would be his position with respect to Watergate and these recorded conversations dealt with the plumbers activity in the Ellsberg case in the summer of 1971.

However, the position of the President was the same. There was no elaboration in the position and you have been furnished with a copy of the letter.

With respect to the news summaries, the President did furnish a number of news summaries for the period March through June 1972, but the news summaries which were furnished were copies that didn't have any of the President's notes on them.

The third matter that I wish to report to the committee about is we asked for certain documents in the files of a number of men in the White House, including Mr. Ehrlichman, and specifically, we asked for handwritten notes of Mr. Ehrlichman produced by the White House on the 5th and 6th of June to Judge Gesell in the case of *United States v. Ehrlichman*.

On the 15th day of July, we received at about 4 o'clock in the afternoon, at our office, a package of material from the Special Prosecutor's office. At about the same time on that day, or maybe a little earlier, I



received personally from Mr. St. Clair a package of material. Examination of this material indicated that both sets of material were the handwritten notes of Mr. Ehrlichman for a period from June 17, 1971 through May 1973. The package that was delivered by the Special Prosecutor was apparently delivered to us by mistake. There had been an exchange of telephone calls between some representative of the White House and some representative of the Special Prosecutor's office, and as I understand it second hand, the White House person had asked that those notes or a Xerox copy of the notes be returned so that they could use them in preparing the material that the White House was going to submit to the committee.

The instruction was misunderstood and the person at the Special Prosecutor's sent the notes to the committee.

Well, the point of all this is that there are about twice as many blank pages on the material that was sent by Mr. St. Clair to the committee as there were on the material that was over in the Special Prosecutor's office. We have not had a chance to analyze all the material but to give the committee just a rough idea, we received from the White House 175 pages of material, 88 pages of which are blank, and we received the same set of material from the Special Prosecutor. It was 181 pages, 40 pages are blank. If you count the number of lines and notes in the material from the Special Prosecutors, there were 1,370 lines of notes and in this, what we received from the White House, there were 643 lines of notes.

Now, our preliminary examination of these two sets of materials indicate that there was blanked out of the material furnished to the Judiciary Committee a considerable amount of material with respect to President Nixon's discussions with John Ehrlichman on the subject of the Ellsberg prosecution. There were also a number of other things eliminated.

I call this to the committee's attention pursuant to the instruction of the Chairman and as soon as we can in a careful way, we will make this material available to the committee, what we think is the relevant material, and indicate where the relevant material had been excluded from the material which was furnished by the White House to the committee.

Mr. McCLODY. Mr. Chairman, could I ask counsel this question?

Do I understand that the material which you received from the Special Prosecutor, which apparently the committee received by mistake, will be included in the material that you will furnish to the members?

Mr. DOAR. Oh, yes, sir. It is just so bulky that to furnish it all to you without some kind of analysis and guidance is just impossible.

Mr. McCLODY. And then also—

Mr. DOAR. I would say to the members that we do have three copies of that made and that both sets of it will be available for inspection by the members if they want to get an idea, just to go through it.

Mr. McCLODY. Then the material that the committee members will get, we will get both versions?

Mr. DOAR. That is correct.

I wonder, really, whether the committee members would want me to make 38 copies of each version. That is an awful lot of Xeroxing.

I would think that it would be practical if we had copies available for inspection. If the members want it, we, of course, can do that, but we would call attention of the committee members to the relevant portions of the material and indicate——

Mr. BROOKS. Will counsel yield?

Mr. Chairman?

Mr. McClory, do you ask to make that a part of the record? That is what you were doing, but you were just talking about——

Mr. McCLODY. I would be interested in having the relevant materials made a part of the record and made available to the committee members. I don't want to insist on having 38 copies——

Mr. DOAR. We will make it a part of the record, we do make it a part of the record, ask that it be made a part of the record.

Mr. RAILSBACK. Mr. Chairman——

The CHAIRMAN. I think frankly that this item that is being called to our attention is very pertinent for the reason that here we have before us materials which were sent to us by the White House after we had subpoenaed those items and the materials that were furnished to the prosecutor, but on examination—and I don't suggest that we in any way again attribute any motivation or anything of the sort, but on examination, there are a number of blank pages in the items—in the set of notes that we have received and I have examined some of the notes.

I might say that on examination, a very cursory examination, I think that some of those matters are rather pertinent and relative to this inquiry. Yet they are not contained in the set of notes furnished to us, but they are contained in the set of notes which the Special Prosecutor has. And I think that this ought to be a matter that the committee ought to properly examine.

Mr. McCLODY. But, Mr. Chairman, how are we going to get this? I want to look at this material. How am I going to look at it?

Mr. DOAR. It is available to you over at the——

Mr. McCLODY. OK.

Mr. DOAR. Or we could furnish it to you.

Mr. McCLODY. That is satisfactory to me.

Mr. BUTLER. I would like to ask counsel, were either one of these things accompanied by a covering letter?

Mr. DOAR. The material that Mr. St. Clair gave to us was accompanied by a covering letter and the other material was accompanied by a covering letter.

Mr. ST. CLAIR. Mr. Chairman——

Mr. BUTLER. I am sorry, I yield to Mr. St. Clair, if that is appropriate.

Mr. ST. CLAIR. May I, sir?

The CHAIRMAN. Certainly.

Mr. ST. CLAIR. As I explained to Mr. Doar and I think to Mr. Jenner, the production of materials to Judge Gesell was essentially in two phases. The first phase was handled by Mr. Buzhardt. When he had his heart attack, which was very sudden, we were unable to ascertain precisely what he had furnished. For that reason, we asked the Special Prosecutor's office to give us copies of what they had so that we could furnish the complete set to this committee. Somehow or other, that

material or that message got confused. They sent it here, we have no objection to that. All I want to do is be sure we have a copy of everything you have. Our intention of asking the Special Prosecutor to give us a copy, and we have done this before, in connection, I think, with some of the plumbers documents, is to be sure that you have what they have. When we did that, we did that for the purpose of getting the complete set to send to you and keeping one for us. That is the explanation for this. They apparently just sent it over here.

As I say, we have no objection to that. Except I want to get a copy of whatever they have.

The CHAIRMAN. It will be made a part of the record.

Mr. BUTLER. Mr. Chairman, I thought I still had the time.

The CHAIRMAN. Yes, Mr. Butler.

Mr. BUTLER. I am satisfied with that explanation of how this error arose and I would think that it would be appropriate for us as a committee to proceed with the examination of all the evidence that has been brought to us from the Special Prosecutor in regard to this. I would like to request counsel, for my purposes, it would be far more appropriate to have the benefit of a digest or a summary in as concise a form as you can, hopefully participated in by a member of the minority as well as Mr. Doar's staff. And so that we can be assured that the digest meets our requirements of objectivity.

Mr. LATTA. Mr. Chairman.

Mr. EDWARDS. Mr. Chairman.

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Chairman, I would like to ask counsel, Mr. Doar, did the letter of transmittal from Mr. St. Clair explain that this was a partial distribution to us and that the White House was awaiting the material from the Special Prosecutor so it could supplement the delivery to us so that we would have the full amount delivered to the Special Prosecutor?

Mr. DOAR. No, it did not. It said that——

Mr. EDWARDS. It inferred that this was a final delivery to the Judiciary Committee?

Mr. DOAR. Yes, it said, "We are furnishing those parts of Mr. Ehrlichman's notes that were furnished to Mr. Ehrlichman pursuant to Judge Gesell's subpoena."

Mr. EDWARDS. Thank you.

Mr. LATTA. Mr. Chairman.

The CHAIRMAN. Mr. Latta, I will recognize you. Then I think we have to recognize Mr. St. Clair so that he won't be interrupted by any of the proceedings of the House.

Mr. LATTA. I recognize that fact, Mr. Chairman. But apparently, this is of such importance that it has taken up quite a bit of the committee's time this morning. I feel as one member of this committee that I have had enough deletions and so forth that I want to see the entire thing. I think the American people want to see the whole thing. So I would hope that we will not get any abbreviated summary from anybody, that it will be inserted verbatim, word for word, in the hearings of this committee.

The CHAIRMAN. It will be made part of the record, part of the hearings.



Mr. SEIBERLING. Mr. Chairman?

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. I am going to proceed now.

Mr. MARAZITI. Mr. Chairman, on the procedure, may I be recognized on the procedure?

The CHAIRMAN. No, I am going to recognize Mr. St. Clair, out of deference to Mr. St. Clair. He is going to take at least an hour and a half. We will be going to the floor—I understand there are plenty of amendments—

Mr. MARAZITI. I want to be heard on this procedure of listening to Mr. St. Clair.

The CHAIRMAN. The gentleman is out of order.

Mr. MARAZITI. I want to be heard on this procedure. I raise a point of order.

The CHAIRMAN. I am sorry, the point of order is not in order.

Mr. MARAZITI. I want to raise a point on the procedure of Mr. St. Clair going first. I want to be heard on it.

The CHAIRMAN. Mr. Maraziti, I am sorry, but you are out of order. Mr. St. Clair has been invited to present the response. There is no other order than the invitation of Mr. St. Clair to make this response.

Mr. MARAZITI. May I ask one question, Mr. Chairman, on the procedure—

Mr. SARBANES. No, no, regular order.

Mr. MARAZITI. I think I am entitled to be heard.

I raise a point of order, Mr. Chairman.

The CHAIRMAN. What is the point of order?

Mr. MARAZITI. The point of order is I want information on the procedure that this committee is going to follow on listening to counsel, counsel for the President, counsel for the committee. I want to know if Mr. Doar is going to make a presentation to the committee following Mr. St. Clair. That is all I ask.

The CHAIRMAN. That is not the case. Mr. St. Clair is making a response this morning.

Mr. MARAZITI. The point I wanted to make is I think it is not the logical procedure for the negative side to make a response until the affirmative has come forward and stated its points and its programs. Then there is a response to that. That is a recognized method in any kind of procedure, any kind of debate—

Mr. BROOKS. Regular order, Mr. Chairman. I demand regular order. I am tired of this. Let's get with it. We have got this man here. Let's hear him and quit arguing and squabbling. I am sick of this.

The CHAIRMAN. Mr. St. Clair.

Mr. St. Clair, you take the time that you want.

Mr. ST. CLAIR. Thank you, Mr. Chairman.

The CHAIRMAN. I would hope that the members of the committee would not interrupt Mr. St. Clair until he has completed his response.

Mr. DONOHUE. Do I understand when you say a response that this is not going to be a summation of all the evidence or an argument as we usually have connected with a trial?

Mr. COHEN. Regular order.

The CHAIRMAN. We have invited Mr. St. Clair to present an oral response.

Mr. St. Clair, will you proceed?

MR. ST. CLAIR. Thank you, Mr. Chairman, members of the committee.

I think I would be less than candid if I didn't indicate to you the enormity of the responsibility that I feel in regard to this matter, representing as I do the President of the United States in a proceeding that, fortunately, is reasonably unique in our history. Frankly, the enormity of this responsibility sometimes seems to be, to me at least, somewhat overwhelming. I doubt very much if I can adequately, in the time that I contemplate using or in fact, in any time, fully acquit my responsibility in such a tremendously important proceeding. I hope you will bear with me. My only consolation is that I think that the enormity of this responsibility is even greater on your shoulders. After all, when I am through, I can get up and I can walk out that door. But you are going to have to sit here and you are going to have to make some very important decisions. And you are going to have to be counted with respect to those decisions and they are not easy. And they are not solely legal decisions. They are as much political as they are legal.

I would only say this. I am not a person that is skilled in the art of politics. I can only say this, that I think the American people will expect that this committee would not vote to recommend any articles of impeachment unless this committee is satisfied that the evidence to support it is clear, is clear and convincing. Because anything less than that, in my view, is going to result in recriminations, bitterness, and divisiveness among our people. And this will not be good for the United States of America.

So when I say I feel an overwhelming responsibility, I can only say, well, at least I can walk out that door and I think that you have even a greater responsibility and as we have been here in the last 9 or 10 weeks, I have seen nothing to indicate to me that you are not well aware of precisely what I am talking about.

Now, in the next hour or so, and I hope not to run much over an hour, Mr. Chairman, I am going to try to summarize briefly my views with respect to the evidence and what it means as I see it. Obviously, I am not going to try to cover every piece of evidence on each of the major areas covered by the staff report and our supplemental report. To do so would take days, not hours.

Furthermore, I fully recognize that each one of you is a lawyer and that we can engage in a great deal of shorthand between us so that I don't have to fully elaborate all of the matters. Everyone has sat through virtually every session, running sometimes late in the evening, so that I am sure that you will understand in substance what I am trying to say in the course of this response.

Of course, evidence, or, as we call it, information is the basis upon which any decision can be made. No political decision, in my view, can be made divorced from the fundamental facts. This committee properly, in my view, has seen fit to publish the great mass of material that your special staff has gathered together. The full impact of that will not really reach all of the American people or, to that extent, the American people who will have no awareness, for several weeks. So you have to sit here, really, as the surrogates for the Amer-

ican people. You know what this evidence is. You have to frame a judgment with respect to it, knowing full well that the American people may well second-guess you.

An inference piled on an inference will not do, ladies and gentlemen, in these proceedings, any more than they would in any other proceeding. An inference drawn one way where the opposite inference is just as logical will not do. You know that and I know that. The information in my view, must be clear and it must be convincing before the major surgery that would be tantamount to a vote to recommend an article of impeachment.

For example, a major effort has been made by the staff—and I am not at all critical of them; that is their duty—to suggest to the committee that everything that Mr. Haldeman knew, ipso facto, the President knew. Well, that is an inference. I would suggest there is no evidence to support it, and in fact, the weight of the evidence would seem to contradict it.

First of all, consider the function of the principal aide to a President. Is it simply to regurgitate and pass through everything he gets? If that is the function of the principal aide to a President, he doesn't need one. This particular aide was one that, as Mr. Colson described him—and I think it was confirmed by Mr. Mitchell—was in the habit of filtering out information he thought not appropriate. And in fact, Mr. Colson said that was not uncommon for other aides in the White House. We may have our views with respect to the propriety and the wisdom of this, but the fact is that Mr. Haldeman did not pass everything to the President that he was aware of.

For example, Mr. Butterfield, I think, was the first witness. He testified that by virtue of his position with respect to the flow of information in and out of the Oval Office, he felt that he had a very good reading, as I think he put it, on the information that was passed to the President by Mr. Haldeman. Despite the relatively short time that he said he spent with the President, nevertheless, he indicated to you that he felt he had a good feel for it.

Specifically, as it relates to the issues, then, in this case, you will recall, I am sure, that Mr. Butterfield testified that despite this feel for the informational flow to and from the President, he never heard of any alleged coverup of the Watergate break-in. Well, now, if he had such a feel and he never heard of that, then it is obvious that Mr. Haldeman did not pass any such information to the President, even if he had it.

Furthermore, if we assume, just for the purposes of this argument, in fairness to Mr. Haldeman, he was involved in a conspiracy to obstruct justice, what objective would be served by informing the President of that fact? In fact, I think as Mr. Henry Petersen indicated in his testimony, that would probably be about the last person that should be told. And this record is replete with conversation with respect to keeping it away from the President, getting him out above it, words to that effect. As I recall, John Dean, himself, on April 16, in discussing matters with the President, said, in substance, "I have never passed anything to you, Mr. President, that would involve you personally."

So I suggest to you that if you in your deliberations conclude that it is essential to making out a case that would justify a vote recommend-



ing an article of impeachment that Mr. Haldeman infrequently passed everything he knew to the President, the record will not support that finding and the matter of commonsense would not support any such finding.

Take, for example, testimony yesterday with respect to commitments to ambassadors. It is quite clear from that testimony that Mr. Haldeman wasn't even supreme in some areas, even though he was Chief of Staff. However, I would like to deal more specifically now with some of the issues. As I say, I don't intend to deal with all of them, but I have selected what I believe to be the principal ones and briefly would like to deal with some of those.

First, the issue identified as ITT. Originally, as this issue developed, as I view it, it was a suggestion that a contribution made by the Sheraton Corp., a subsidiary of ITT, to a governmental agency of the city of San Diego in the amount, I believe, of \$100,000 with a conditional commitment for an additional \$100,000, occurred in juxtaposition of time in such a manner that at least one newspaper reporter was led to conclude that that contribution was made in consideration for the settlement of the three ITT cases which were settled at or about that time. Now, it was clear from the evidence, and you have the benefit of a tape recording of a Presidential conversation with Mr. Kleindienst, which stated in very clear, unequivocal terms, that the decisions with respect to ITT in connection with the prosecution of that appeal, as far as the President was concerned, were a matter of policy and he wanted his policy carried out. Right or wrong, that was his policy and he was the elected official that was to carry it out and he took a dim view of those who didn't carry out his policy. You will recall that advice given to him by Mr. Mitchell that he ought not to interfere with the Department of Justice prosecution of these cases was adhered to by the President and a couple of days later, he reversed that instruction. But it was clear in the course of that conversation, an unrehearsed, unstructured conversation, that his decision had nothing to do with Mr. Geneen or any contributions of any nature. And I think essentially, this was recognized.

Then the question arose, well, maybe the President was aware and should have taken steps to either remove Mr. Kleindienst or take some effective steps because of Mr. Kleindienst's testimony in his nomination proceedings—or his confirmation proceedings, excuse me—that he was not in any way importuned by the White House in connection with the settlement of the ITT cases. Now, you have to keep in mind that the context of Mr. Kleindienst's testimony was the settlement of the ITT cases. It was not whether or not to drop the appeal from the adverse decision. Quickly, the settlement, all agree it was a good settlement. The testimony is that Mr. McLaren negotiated it without any interference from anybody, even from Mr. Kleindienst. So the fact of the matter is that the settlement was not in any way involved with any importuning from the White House. And even Mr. Kleindienst, in his explanation of his testimony, said, in the context that I thought I was testifying, I didn't consider that I said anything untrue, because in fact, as far as the settlements were concerned, I received no interference from the White House. And Judge McLaren himself confirmed that.

So that it seems to me quite clear that there is no basis for believing that the President would be any different than the witness himself, that he would view this in the same context as the witness himself; namely, did the President in any way interfere, direct, or otherwise importune Judge McLaren or anyone else regarding the settlement of test cases? And the answer is he did not, and there is no evidence that he did.

Now, the next item I have undertaken to review is the dairy industry investigation. Here, we, I think, are advised that the initial approach with respect to these contributions was from AMPI, and I will refer to it as AMPI, indicating that they desired to contribute money to the President's campaign. In fact, I think there had been further overtures in connection with the 1970 congressional election. Now, it seems to me that the evidence in this instance, in this investigation, discloses nothing more than the normal political process of receiving contributions from interested people. It does not mean that if someone votes or takes action consistent with the desires of its contributors, that that person, be he a President, a Senator, or a Congressman, is guilty of receiving a bribe. By no means. To hold otherwise would strike a fundamental blow at our way of life. The situation here, it seems to me, is quite clear. Again, you have the benefit of a tape of the actual decision, of the discussion between the people who made that decision, the basis upon which they made it, an unusual opportunity. As we lawyers know, you seldom have the opportunity to sit in at the decisionmaking process. And in that decisionmaking process, you recall as well as I what the principal elements were.

Mr. Connally outlined for the President in some detail the plight of the dairy farmer, the importance of the industry, the congressional status of legislation that would have affected the same result, similar and it was concluded, and I think rightly so, that this was going to happen anyway; that perhaps maybe we can get a 2-year coverage without any further increases, but since it is the wisdom of Congress to raise the price support levels, then the administration probably has no choice. The matters of judgment involved as to whether or not production would be increased or decreased by a quota were admittedly close questions of judgment. You may recall the meeting with the Secretary, the President, and others with members of the industry earlier on the same day.

The Secretary indicated, this is a close question of judgment, and there was some judgment as to what will affect or what will happen with respect to production. Will there be overproduction, and so forth? And members of the industry gave their reasons why an increase would be an appropriate thing to do.

So that we have the decision. We know the basis for it, and we know that the decision was not in any way conditioned upon any contributions made by this group and similar dairymen's groups. And the basis of the decision did not admit of any change or variation in that decision depending on whether or not the dairymen's group would reaffirm or not reaffirm their pledges. The basis of it was the congressional attitude, the importance of the matter, and other similar bases. Whether or not Mr. Nelson, if he was the one, said we reaffirm, had reaffirmed or not reaffirmed, the decision would have been the same.

Therefore, there could not have been any quid pro quo, as we say, for this decision. It was not made on the basis of contributions.

And if you look at the history of the administration with respect to the milk group, it is very hard to conclude that the administration in fact showed them any favors without regard to what prior administrations did or didn't do. I am not concerned. I am concerned about this administration.

The import quotas were not reduced to zero on all the products that the dairymen's group wanted them to be reduced, even though there was a Tariff Commission recommendation to that effect. This is hardly the conduct of an administration that seeks to conduct its policies in consideration of any contributions. And I thought the crowning blow was that even after they had made substantial contributions, the administration prosecuted the organization for violation of the anti-trust laws. Hardly the conduct of an administration that is currying favor with a large contributor.

Now, we all have our views, I am sure, about the modern day feasibility of such contributions. That is a legislative matter to which the legislature, I am sure, has and will direct its attention. But I submit there is no evidence that would warrant a vote recommending an article of impeachment in connection with the dairy investigation. Any more than there would be discredit for any other recipient of that and similar types of contributions, not only from dairymen's organizations but from labor unions and other types of organizations.

As I said at the outset, to me this seems to be the normal political process as we have known it. It may not be correct, it may not be wise, it may be wise. A lot can be said on either side. But surely, there is no basis for an article of impeachment arising out of the dairy contribution investigation.

Passing, then, to an entirely different subject, if I may, the President's personal income taxes. First of all, there was some suggestion that he asked that the joint committee audit his return because he was running away from an IRS audit. I think the evidence clearly destroyed any such implication. That would be like jumping from the frying pan into the fire, in my view. The obvious reason, as counsel for the President indicated, was to avoid any inference that he was controlling the agency that was auditing his returns. May I say I am not familiar with a more complete audit of anyone's tax returns than the President went through, the most searching audit, I think, that probably any taxpayer ever had. And may I say—not in any complaining tone, but may I say that I think most of the judgment issues, if not all, were resolved against the President.

At the time this evidence was being considered, I said to myself, facetiously, I will agree, I don't think I would mind having the President's case in a tax court on a contingency basis. I think he had a good case on the law. If you will read the briefs that were supplied to the joint committees by counsel for the President, you will see readily what little it takes to effect a gift and, in fact, the agency here involved has determined that a gift was made. I have never been able to figure out how a gift can be made, the President can't get back his papers, but he is not allowed to have the deduction. However, it was not my function to pass judgment on that decision. The President made a



decision. He would submit his returns to the joint committee, and he must live with that result.

All I am saying is this, that it would be inappropriate in the extreme in my view, to suggest that he had an incomplete audit; that it was in any way designed to avoid responsibility for taxes.

Finally, with respect to the good faith of the President in terms of fraud, first of all, the record is clear that there is a determination that he was not guilty of fraud. A negligence penalty was assessed and you don't assess a negligence penalty if there is any basis for a claim of fraud.

Second, however, I think we can all see what in fact happened. Perhaps it has happened to us or some of our clients. A tax return is prepared on information furnished to the preparer by a number of different sources. It is brought in in a rather ceremonial proceeding. As Mr. Kalmbach indicated yesterday, the firm was very proud of preparing the President's return and he showed up to participate in the ceremony. And it was largely ceremonial. I think he said that Mr. DeMarco stood next to the President as they flipped through the return, spent, I think he said, 10 to 15 minutes, if I remember his testimony; that there was some discussion in generality with respect to the major items. But most importantly, during the course of that conversation, Mr. DeMarco advised the President that he had a good tax shelter for the next period, I guess, of 5 years. That appears in the materials submitted by your special staff and was confirmed last night by Mr. Kalmbach.

So here you have a President whose lawyer advises him that he has a good deduction. There cannot be a basis for a claim of fraud against the President. Whatever may be the circumstances with respect to the preparers will be determined, presumably, in due course by proper agencies charged with the responsibility of investigating. But clearly, there is no basis for a charge of fraud against the President of the United States.

Somewhat related only in the subject matter, but not in terms of any Presidential involvement is the charges with respect to the Internal Revenue Service and allegations that the Internal Revenue Service was used to either punish or harass political "enemies." Mr. Dean's testimony established, as I understand his testimony, that it was on September 15, 1972, that the President spoke to him about utilizing the IRS and that if he didn't get any place in his efforts, the President—he, the President—would see that Mr. Shultz did what he was told, or words to that effect. Let's keep in mind, first, that Mr. Shultz was appointed by the President, as was Mr. Walters. Let's also keep in mind that Mr. Dean's approach to the IRS in fact took place before this meeting of September 15—exactly, I think, September 11—during the course of which Mr. Dean advised Mr. Walters that he was not appearing there at the request or on behalf of the President. What thereafter happened was a phone call, as I understand it, by Mr. Dean, or perhaps a visit, wondering how the so-called enemies list was getting along, and he was led to believe that nothing was being done, and in fact, nothing was being done.

To show you how ridiculous it is to suggest that the administration was able to manipulate the Internal Revenue Service, consider, if you

wili, the case of Mr. Green, a reporter for Newsday magazine. There is some evidence to the effect that Mr. Caulfield made an approach to someone in the Internal Revenue Service to investigate Mr. Green's returns. Mr. Caulfield was advised, we will not do it; if you want to have that done, you can file an anonymous letter such as any citizen can do.

So here you have the administration reduced in its influence on the IRS to having to write anonymous letters to the IRS. The fact of the matter is, as we know, no returns were audited as a result of Mr. Dean's efforts. The Joint Committee investigated the matter thoroughly and so found.

It is quite true that Mr. Ehrlichman talked with Mr. Shultz about Mr. O'Brien's return. You will recall that the audit of Mr. O'Brien's return had been completed, that Mr. Ehrlichman was dissatisfied with the result, that he suggested that the IRS was picking on Republicans and not Democrats. But what happened? Nothing. There is no evidence whatsoever that Mr. Shultz was in any way importuned by the President to do anything about the enemies' list, to harass anyone through the IRS, and in fact, none was done.

There was some suggestion that perhaps a friend or friends of the President might have had a tax break. One I can remember immediately is John Wayne, I believe to be an actor. The fact of the matter is that the auditor, the audit of Mr. Wayne went right ahead without any result by reason of inquiry of the White House whatsoever.

The present Commissioner is also an appointee of the President. So here you have appointees of the President, I submit, conducting the affairs of the IRS in a manner that we would all be proud of. And to suggest that this would constitute a basis for impeachment of the President flies in the face of fact.

We are not here to impeach John Dean or even Mr. Ehrlichman. The question before you is, are you going to vote for articles of impeachment of the President of the United States? And you are going to have to, as I have indicated earlier, satisfy yourselves that there is information—not guesswork, not supposition, but information—that would justify that action. Because the American people are going to know what that evidence is. They are going to have a feel for it. We as lawyers know how cases feel. You can feel a case in a courtroom. And I think you and I know this case feels in this courtroom.

Now let's go on to the plumbers matter, the Ellsberg case, and wiretaps. Put these all together, because they all relate to the same general subject matter, namely, what I think is fairly apparent, that at least the administration thought it was faced with a crisis in the conduct of the affairs of this country by extensive leaks in newspapers relating not only to the Pentagon papers but to the India-Pakistan relationship, the Okinawa decisions and negotiations with Japan, the SALT negotiations, and perhaps others. And it was demonstrated, I think beyond question, that these matters were periodically appearing in the press. Now, we can blame the press if we want, but we really have to bring the blame on individuals who give this information to the press. And for my part, it would seem to me the information would suggest that if the President stood idly by and did nothing about the circumstance of this situation, and if these conditions continued, that in turn might well have been justification for an article of impeachment.

I cannot conceive how the Chief of State of this Nation could not be concerned by these revelations, and our learned friends from other nations read these newspapers assiduously, I am sure. Each of the wiretaps involved was authorized not only by the Attorney General in writing, but by Mr. Hoover, the head of the FBI.

So criticism was directed to the fact that nothing worthwhile was produced by the wiretaps. First of all, I think that is inaccurate in terms of the information. There is evidence that one individual who was described as the source of a leak, was discharged. In our submission, I think, he was designated by the letter "L," and Mr. Hoover was so advised in writing. We do know that individual who had extensive exposure to sensitive material was removed from security clearance.

If only one of those things happened, or in fact if none of them happened, clearly, the situation called for action on behalf of the President, and he took such action.

We expect Presidents to do such things. We expect Presidents to take action that he thinks in his judgment is sound to protect this country. And as I say to you, if he had not done these things, that in turn might well have been a basis for severe criticism of the President.

Now, as far as the Pentagon papers are concerned themselves, the fact that such matter was published, I think, would disturb a number of us. Without intending to analyze the papers and so forth, which would take days and weeks, I would say that it is not unreasonable that a President and his principal foreign policy adviser were very upset that this could and did happen. The individual who did it was actively engaged in promoting the justification for his conduct, and I am not passing judgment on it except in a personal manner. But he undertook to justify in the public media his conduct. Is it inappropriate for the President to suggest that maybe it was inappropriate in the same public media? What in effect really was contemplated here was a congressional investigation, with the informing power of the Congress to be utilized to advise the American people of the seriousness of this material, the seriousness of the act, so as to discourage others from doing the same, and to indicate to the American people the nature of what was going on.

Now, as far as Mr. Ellsberg personally is concerned, Mr. Colson, I think, testified at some length with regard to the administration attitude toward the man. Mr. Colson, very frankly—I really don't quite understand what it was he thought he was pleading guilty to, because I think it happens every day that people disseminate information derogatory of other persons. That is the American way of life. We have the freedom of the press and all of us are the recipients of it. The whole Ellsberg matter, it seems to me, is a lesson in what can happen if an administration does permit this type of thing to go on unabated. And if Mr. Ellsberg sought to set himself up as a hero seeking support and perhaps similar conduct from others, I fail to see how an administration can be criticized for taking him on, for criticizing him, for pointing out who he really is, what he has really done.

With respect to the President's activities in this regard, it seems to me that Mr. Petersen indicated quite clearly that as far as the Fielding break-in is concerned—and may I add parenthetically, there is absolutely no evidence that the President knew about that in ad-



vance. His own unrehearsed statements in the course of recorded conversations make that clear. Mr. Ehrlichman's suggestion that he may have files in the face of even Mr. Ehrlichman's testimony. Mr. Ehrlichman said he didn't know about it in advance. The President thought it was a fairly stupid thing to do. But the President was firm in his resolve that these leaks were going to stop and he intended to exercise the full authority that he had as President of the United States to see that they did stop. And may I say, apparently, he was reasonably successful in this regard.

Now, when the Fielding break-in came to the attention of Mr. Petersen, the President indicated to him that this was a national security matter. Now, I think you have to consider the activities of the Plumbers in this respect. It is clear that the Plumbers were not only interested in Ellsberg and the Pentagon papers—they were interested in that. But it can now be disclosed that they also were very actively engaged in the Radford investigation, which is a very sensitive matter. They were also engaged in investigations involving drug traffic and perhaps others. So that if investigations went to the Plumbers unit, it could not help but spread into these other matters. And that is what the President said when he said, this is a national security matter.

The President felt quite strongly about that and I suggest it is a reasonable position for him to take. However, Mr. Petersen felt that when the knowledge of the break-in became known to him, while it may not be a requirement as a matter of law that that be disclosed, because in fact, no evidence was tainted as a result of that break-in, but as a matter of prudence, it was recommended to the President that that be disclosed to the court, the President without hesitation agreed. Again, it would be hard, in my judgment, to fault a President for his conduct in this matter.

Now, I am not going to argue that the President, in fact, or any of us are perfect in every respect. We are not; nor is he. But it takes a great deal of imperfection, and we have argued to this committee it has to be of serious criminal nature, before the American people will see their President impeached.

So that as I see it, the circumstance that the administration was faced with at that time, and we have to remember that these were very serious times as far as the foreign relations of this country were concerned, took effective steps to control the situation. Now, as I said, I don't contend that the President is perfect. I think he would be the first one to admit it. I suggest, however, that in appraising his conduct, we do just that. Let us appraise his conduct, not what he says. If we were all to be held responsible essentially in a criminal matter for everything we said in terms of frustration, anger, conversation with friends and so forth, there wouldn't be enough jails to hold us all. Let's judge the President on what he did. And I suggest to you that he effectively dealt with this dangerous situation.

Now, I would like to devote the balance of my time to the Watergate matter, because I believe that this is fundamental to these proceedings. Obviously, there are matters I have not dealt with at all—the Cambodian bombing, the impoundment of funds, and perhaps other matters. The chairman has indicated graciously that we may file briefs on not only these matters but others, and we intend to do so

within a day or two, and I will have to rely on my brief. But I would like now to address myself to the Watergate, because as I say, I don't think we would be here if it were not for this unfortunate event.

In June of 1972, a break-in occurred in the DNC. Mr. Colson, I think, aptly described it as politically as inept a project as could be imagined. In any event, it happened. It happened that one of the individuals arrested was also on the payroll of the Committee To Re-Elect the President. It also happened that either he or another person had on his person identification that indicated a connection with Mr. Hunt.

The first question that the American people have been wrestling with now for, I guess, more than 2 years is did the President have any prior knowledge of a plan to break into the DNC? And I submit there is not the slightest evidence that he did. It would fly in the face of just plain commonsense in the first place. In the second place, his own statements made at times in recorded conversations, when it would be not thought that they should be structured or rehearsed or anything, make it quite clear that he didn't know anything about it, that he thought it was a stupid thing to do; that his reaction was one of considerable silence, as I recall Mr. Colson's testimony.

There was some thought that perhaps, after Mr. Mitchell's return at the end of March 1972, from Key Biscayne, when he met with Mr. Haldeman first and then the two of them met with the President, that it may well be that they discussed electronic surveillance or similar activities at that discussion. As we know, the transcript discloses the subject matter was not discussed at all. It just seems to me quite clear that there would be no basis at all for anyone's legitimately concluding the President had prior knowledge of this break-in. I don't pretend to sit here and tell you who I think did or who didn't. I think the resolution of that problem awaits another forum. I do know that there is a great deal of confusion regarding the matter. There is a great deal of conflicting testimony, as we have seen right here.

But the more fundamental problem, I think, that concerns the American people and thus concerns us, is whether or not the President was in any way involved in a criminal plot to obstruct justice after the break-in and up to March 21, 1973. I guess the principal piece of evidence that would be relied on to support any such finding would be Mr. Dean's testimony of his conference with the President on September 15. Now, as I said before, it is a great temptation to try Mr. Dean. But we don't have to do that. He has tried himself. He has already told us that within days after he returned from Hawaii, within days after the break-in, he, on his own, like Topsy, as he said, undertook to participate in the criminal conspiracy to obstruct justice.

He has pleaded guilty to it. Nothing would be served by my devoting extensive time to beat this gentleman any more. I would only observe this, and it struck me as being very significant about Mr. Dean. There was a very fine man here on the stand yesterday. This very fine man was lied to by Mr. Dean in a most dangerous manner. If this man hadn't had the advice or at least the insight at some point to get away from this, he could well have been indicted along with the rest of the people. Mr. Dean knew he was involved, on his own testimony, in a criminal plot. But he led this man to believe that it was all on the up and up. And if we believe Mr. Ehrlichman's statements to this man

sometime in July of the same year, he did the same thing to Mr. Ehrlichman.

However, on September 15, he testified before the Senate select committee that he was certain that the President was well aware of the coverup. After being examined at some length by a number of Senators, he watered that down considerably to indicate, well, it was an inference that he drew. I suggest a fair reading of the text of that conversation as it relates to this subject matter makes it quite clear that the President was concerned with the political and the public relations aspects of this matter. It never occurred to him whatsoever that there was a criminal plot to obstruct justice. He was concerned about the politics, the newspaper coverage. He used the word "leaks." It is very clear that the President was concerned about these matters and not about any criminal obstruction of justice. So that to suggest, as Mr. Dean has in the past, that that proves the President knew of this plot simply is not supported by the facts.

And this is really underlined when Mr. Dean, on March 21—and he now admits it was March 21—came in to the President and said, in substance—and I can't quote it directly—it seems to me, Mr. President, there are some things I know that you don't know and that you had better know because you are going to have to make some decisions. And then he begins to tick off the things the President ought to know. One of those was a clear allegation of an obstruction of justice. Why is it that this man would come to the President and say, there is something I think you ought to know that you don't know, and still have the belief that he already knew it and had known it since September 15? Of course, that just doesn't wash.

Later on, during that same conversation, he said to the President in substance, I can tell, Mr. President, from your answers that these matters that I have talked with you about are new to you, you haven't any prior knowledge concerning them. And indeed, a fair reading of that conversation would indicate exactly that. The conversation was all over the lot. And we could spend 3 days sitting here arguing about phrases, words, sentences, paragraphs of that conversation. But one thing I would like to make clear is that the President in the course of that conversation did not authorize any payment to Mr. Hunt or his attorneys for any reason.

How can we say that? Let's see what the people did. We as lawyers quite often judge people by what was done or not done.

Did Mr. Dean go out and make arrangements for the payment? He did not. He indicated in his testimony here he felt under no obligation to do anything.

When he testified before the Senate select committee, he said nothing was resolved—unlimited in scope, although he tried to limit it here. He said nothing was resolved.

Mr. Haldeman made it quite clear that he had no instructions to do anything about it, and the evidence is clear he did nothing about it.

Who is it was supposed to do it, then, the President? Clearly not?

The President, in the course of that conversation, made it quite clear, as we all know, as any thinking man would know, you can't pay blackmail. There is no end to it. As he said, we lose, we get the short end of both—we get the short side of both ends of the deal. And furthermore, it would look like a coverup, and that we cannot do. And he said that explicitly.



Now, there has been injected into these proceedings a grand jury indictment—materials sent over to this committee by the grand jury. And I would like to comment briefly, if I can, about that. Because if you read that indictment and particularly the overt acts concerning it—and I might identify overt acts 40 through 44—you get a picture that the grand jury obviously intended to be understood that there was a meeting between the President, Mr. Haldeman, and Mr. Dean on the morning of March 21; that following that, Mr. Haldeman made a phone call to Mr. Mitchell; that following that, Mr. Mitchell talked to Mr. LaRue; and following that, Mr. LaRue made a payment to Mr. Bittman. And if you may recall releases in the public press at that time, references were made to the grand jury indictment as being a roadmap for this committee and the American people to follow as far as Presidential participation was concerned. There is only one trouble with that roadmap. The roads don't exist.

What happened? This committee is the only body that does know what happened. This committee knows beyond any question that the machinery that was set in motion that resulted in this payment had nothing whatsoever to do with the President or any meeting with the President, and in fact, the payment would have been made whether or not Mr. Dean and Mr. Haldeman met with the President on March 21.

We know, for example, that Mr. Dean talked first with Mr. O'Brien and later with Mr. LaRue before he met with the President. Now, he didn't tell the President about his meeting with Mr. LaRue. He did lead the President to believe by what he told the President that there was no plan in the offing for making this payment. He said that he told O'Brien that he was out of the money business; he would have to go elsewhere; in fact, indicating to the President that there was no known plan to make this payment. In fact, however, before he met with the President, he had a talk with Mr. LaRue—Mr. LaRue testified that that was initiated by Mr. Dean—advising Mr. LaRue of the problem and suggesting that Mr. LaRue might talk with Mr. Mitchell, because Mr. LaRue said: "I am not going to make any payment on my own." This all took place before Mr. Dean met with the President, on Mr. Dean's testimony, and I believe to the best of Mr. LaRue's memory he confirmed it.

Mr. Mitchell testified that LaRue called him before Haldeman called him and Haldeman called Mitchell about 12:30, about a half hour after the meeting with the President terminated. So this committee knows what really happened was that Mr. Dean set in motion the events that resulted in the payment of Mr. Hunt's attorney's fees. And he set those in motion without disclosing them to the President prior to meeting with the President.

And I submit he could have gone out and played tennis rather than meet with the President on the morning of March 21 and the same result would have happened. So that the roadmap does not in any way indicate Presidential participation. This seems to me to be clear beyond any serious question.

The meeting of the afternoon of the 21st, when read in its full context, clearly indicates again the President hasn't fully decided what's to be done. It is clear that he is unaware that the machinery has already been set in motion, the appointments made to deliver the

money, the invitations issued, and so forth. He is unaware of that. And he is dealing with the matter as still a matter of judgment, looking forward to the substance of what might develop with respect to discussions with Mr. Mitchell and so forth, the next day. But it is clear in the course of his morning decision, his morning conversation, that he really made his decision then. And his decision was, we can't pay blackmail, and we all know that you can't pay blackmail. And his decision was that the solution is to put this matter to a grand jury.

He was understandably concerned about the political aspects of having the matter go before a Senate committee, and his solution was the matter ought to be resolved by grand jury action. And, indeed, it was ultimately.

However, he was faced with some information and he had to do something about it, and he did. Now, the question is, I think, whether or not the President in fact knew about the payment. It is clear he didn't order it or authorize it.

It seems to me also it is clear that the evidence that we have already indicates that he did not know even that the payment was authorized. But the President has authorized me to distribute to and disclose to this committee a portion of a transcript of a conversation he had with Mr. Haldeman on the morning of March 22, and I will be happy to distribute it at the close of my argument. This is a portion of a conversation that relates to this blackmail attempt. This says, in substance—and, of course, the entire tape is available to the chairman and the ranking member to be—

Mr. DANIELSON. Mr. Chairman, a point of order.

This committee has concluded the reception of evidence.

Mr. BUTLER. Regular order, Mr. Chairman.

Mr. COHEN. Regular order.

Mr. WIGGINS. No interruptions, Mr. Chairman.

The CHAIRMAN. Proceed, Mr. St. Clair.

Mr. ST. CLAIR. Keep in mind, now, this is the President on the morning of March 22 with Mr. Haldeman. And he says, among other things, "I don't mean to be blackmailed by Hunt. That goes too far."

Now, can a President say that on the morning of March 22 and still know of and having authorized earlier a payment that had been effected, according to the testimony, on the evening of March 21? And may have been effected even earlier than that? So that when it is suggested that the President knew all about this, that he condoned it, that he ordered it, it just is not factual.

Now, the next question, then, is raised, what about the President's duty to enforce the law? What did he do? He has a duty; he recognizes that. He had received allegations. These allegations had to be dealt with. They wouldn't go away, but they were allegations. So he asked Mr. Dean to go write up a report and he said, I think, if it opens doors, it opens doors, but I want that report.

Mr. Dean did not write that report, as we know. The President then asked Mr. Ehrlichman to make an investigation, as indeed Mr. Ehrlichman did.

Now, it may be suggested, well, the President should have fired everybody on the spot. Well, I don't see that a President should be faulted for not firing Mr. Haldeman immediately and not firing Mr. Ehrlichman immediately based on these allegations that the person

who made them was either unable or unwilling to put it in writing. But he did undertake an investigation and at the outset, he asked Mr. Ehrlichman to report to the Attorney General of this fact and asked that the Attorney General report directly to the President. I think this took place on March 27.

Now, on March 27—and this is 6 days afterward, 5 days of which they waited for Mr. Dean's report—the President, I believe, was in San Clemente. He ordered Mr. Ehrlichman, who at this time, at least, was not particularly implicated in the Watergate affair, to make an investigation. And we know from several sources that that investigation was being carried on. The President was anxious to clear this matter up, because for political reasons which are obvious to all of us, his administration and he personally were suffering because this matter remained unresolved. So the first thing he did was to insist that Mr. Dean go before the grand jury. This is quite consistent with his determination that was really made on March 21 that the solution lay in presenting evidence to a grand jury.

And may I digress a moment? A considerable amount of discussion has taken place with respect to conversations with Mr. Mitchell relating to the relationships between the White House and the President and the Senate committee with respect to whether or not executive privilege should be claimed. The President, as we know, for many weeks had held to the view that he would insist on executive privilege. This view was adhered to, I guess, as late as the afternoon of March 22. It was recognized by the President that this would be interpreted as a coverup. But he felt quite strongly that as a President, he ought not to abdicate the responsibilities of his office and he took the view that executive privilege would be asserted in the Congress, in a Senate committee, not before the grand juries. However, Mr. Mitchell, and others, I guess—in particular Mr. Colson—prevailed on him to change this view and in due course, he did, so that by the time those hearings commenced—and I think he announced that in his statement of May 22, 1973—that by the time those hearings commenced, executive privilege with respect to the testimony of White House aides was waived, and I think even with respect to the attorney-client privilege that the President had with Mr. Dean.

So as this matter terminated, the President, as we know from the structure of his conversations, deals with a large number of aspects of a problem. But, eventually, the decision comes. It sometimes doesn't come in a flash of light. But eventually it comes and ultimately the decision was not to exert executive privilege because it would look like a coverup, and that he could not stand politically—I think we can all understand that.

Now, what else did he do? Well, he insisted that Mr. Dean go before a grand jury, I think on April 8. Mr. Dean, in substance—this message was relayed by Mr. Ehrlichman. In substance, Mr. Dean said he would, but he wanted to talk with Magruder first, obviously for the reason of visiting Mr. Magruder that he was not going to support Magruder's testimony any longer. He felt in fairness to Magruder that he ought to tell him that. And I don't disagree. It was within days of that meeting that Mr. Magruder decided that he ought to, himself, go before the grand jury, or at least the U.S. attorney, and I think it was on April 14 that he went before the U.S. attorney and changed his testimony.



Throughout this period of time, the President directly, with John Dean and with messages delivered to Mr. Mitchell and Mr. Magruder, indicated his strong desire that they testify, that they tell the truth, that if they have perjured themselves, they purge themselves of that perjury and tell the facts as they have.

Now, when it was learned that Mr. Magruder was going to change his testimony, presumably as a result of Mr. Dean's willingness to go before the grand jury, the same facts became known, of course, to Mr. Kleindienst. Mr. Ehrlichman had talked with Mr. Kleindienst on the 14th, and on the 15th, Mr. Kleindienst met with the President in the afternoon on Sunday, and discussed the matter at length. Portions of that we have. He then suggested that he would have to recuse himself, and he did so. Mr. Henry Petersen was brought in to head up the investigation.

Now, Mr. Petersen has been described as a good soldier. I suggest Mr. Petersen has been a good soldier through many administrations. I found nothing about his conduct that indicated in any way that he would participate in anything that he felt was improper. In fact, he told the President at one point, if I thought you were trying to cover up for anybody, I would get up and walk out. And I think Mr. Petersen would. I have not the slightest doubt about that.

To suggest, though, that Mr. Petersen did something other than what was appropriate seems to me to not be supported in the evidence. He was anxious that the President fire everybody immediately—not so much because he thought they were necessarily guilty, but because he thought it would be bad for the administration to have these people around. There was only one problem: he agreed with the President that Haldeman, Ehrlichman, and Dean ought to be treated alike. To single one out or two out would, in his judgment, be, A, unfair—the President thought it would be unfair—and B, might in fact impair their rights by suggesting that those who were retained were innocent and those who were fired were guilty. Essentially, Petersen agreed.

Petersen asked, however, that the President not take this step because the U.S. attorney's office was engaged in negotiations with Mr. Dean for immunity and it may well turn out they would have to have Mr. Dean's testimony if they were going to be able to indict Mr. Haldeman and/or Mr. Ehrlichman.

So they could not, in the proper prosecution of this matter, give up any chance of obtaining that testimony of Mr. Dean, even if ultimately, it meant they had to grant his immunity. And they wanted time to do this. And Mr. Petersen asked the President, in effect, to hold up and wait until they had a chance to conclude these discussions. And it is exactly what happened.

The President received the written resignations of all three of them on or about the 15th or 16th. But he held those. He held those because Mr. Petersen asked him not to do anything until he had a chance to complete the negotiations with Mr. Dean and his attorneys.

Now, there has been considerable question raised with respect to whether or not the President improperly disclosed information obtained from Mr. Petersen to his aides, particularly, I guess, Mr. Ehrlichman. And I would like to deal with that specifically for the moment if I may.

First of all, Mr. Petersen indicated that he did not at any time, first, give any grand jury testimony to the President. More importantly, he said he never identified any of the information that he did give to the President as grand jury information.

And third, the President clearly recognized a duty with respect to grand jury information, but not all information. If I may make a specific reference to page 966 of the Presidential submission of April 30 to which reference was made during the course of the presentation. The President says to Mr. Petersen :

I just want to know if there are any developments I should know about, and second, of course, as you know, anything you tell me, as I think I told you earlier, will not be passed on.

Mr. Petersen says: "I understand, Mr. President."

Then the President says: "Because I know the rules of the grand jury."

Now, clearly what the President is saying in that conversation is, I know the rules of the grand jury and I won't pass on grand jury materials. And in fact, he never did pass on grand jury materials. He didn't have any to begin with and any information he did have was never identified to him as grand jury materials.

Now, one of the items that it was suggested that he passed on is made reference to on page, I think, 983.

The CHAIRMAN. Excuse me, Mr. St. Clair. Would you identify just what—

Mr. ST. CLAIR. This is page 983, Mr. Chairman, of the President's submission of April 30, 1974. It is a conversation between the President and Mr. Haldeman on April 17, 1973.

The CHAIRMAN. That is the edited transcript?

Mr. ST. CLAIR. That is correct.

Ms. HOLTZMAN. Mr. Chairman.

The CHAIRMAN. We will proceed.

Mr. ST. CLAIR. If I may, on page 983, reference was made that this information was information that was passed on to the President. The President says—well, I should read a bit ahead to get the context. The President says, "Look, you have got to call Kalmbach, so I want to be sure. I want to try to find out what the hell he is going to say. He told Kalmbach. What did Kalmbach say he told him? Did he say they wanted this money for support or—"

And Petersen—No; Haldeman says, "I don't know. John has been talking to Kalmbach."

Then the President says, "Well, be sure that Kalmbach is at least aware of this, that LaRue has talked very frequently. He is a broken man."

Now, I asked Mr. Petersen if that constituted grand jury testimony or information. He said it did not, as it clearly does not. It is certainly something that I think a person like Kalmbach really ought to be aware of, and in fact, had already been informed of the fact, as I remember Mr. Kalmbach's testimony, by Mr. O'Brien. I am sure the President must have felt that he didn't want Kalmbach in some misguided effort to protect the Presidency and the administration to testify to matters that weren't fact, believing that Mr. LaRue had not testified with respect to those same matters. So that the disclosure to

Kalmbach that LaRue had talked freely is hardly grand jury information, and is secondly a disclosure designed only to produce truth.

So when Mr. Petersen said in substance that there was no grand jury material passed to the President, and in fact, the information that was passed to the President was appropriate for the President, to disclose to his aides in the course of determining what administratively should be done for them, or to them, it would seem to me quite clear that there is no warrant in the record to suggest that the President was anything other than acting properly in this regard.

Ultimately, and we are drawing to the close, Mr. President—Mr. Chairman. That is a slip.

Ultimately, of course, the immunity negotiations with Mr. Dean broke down. The prosecution no longer needed his testimony. The President, before that had happened, however, we should remember, said in substance to Mr. Petersen, if you need Dean's testimony to get Haldeman or Ehrlichman, go ahead and grant him immunity. But I am not going to be blackballed in this matter. Ultimately, as I say, the prosecutors determined that they did not need Dean's testimony by the immunity route. The negotiations were broken off. Ultimately Dean entered a voluntary plea of guilty and his testimony became available in that manner. And the President accepted the resignation of all three of them.

Now, as I said earlier, sometimes the best way to deal with these matters, with an inference, inferences are properly to be drawn and the like are to see and to look at what happened. What is the result, ultimately what was the situation? Ultimately in the case of all of the major Presidential aides testified freely without executive privilege assertions before the Senate select committee. So, if there was a contemplated coverup there, it never came to pass.

Furthermore, they were all released of any obligations by way of executive privilege or attorney-client privilege to testify before the grand jury. They were, in fact, urged to do so by the President. In fact, I think he at one time announced sanctions would be imposed if anyone didn't testify before a grand jury.

The President urged Mr. Dean to tell the truth. He urged Mr. Magruder to purge himself of perjury. He told Mr. Mitchell the President was preparing to let the chips fall where they may, that Mr. Mitchell should not keep quiet on his account. And ultimately all of these gentlemen were indicted by a grand jury and are now prepared to stand trial on these issues, so that if you want to judge the pudding by the eating, the process has worked. Maybe it should have worked days earlier. I don't know. I don't pretend perfection on my part or even on the part of the President.

I find it hard to be critical of a President who would stand by his what he thought were faithful aides until such time as there was evidence developed that they should be released. I am sure that if every time our associates were charged with wrongdoing we fired them, we would never have anybody work for us.

But, when it is all said and done, the preservation of justice, of administration of criminal justice has been preserved and is functioning; as late as last week, it functioned, and will function in all of these cases.



So, can it be said that what the President did or did not do perverted the administration of criminal justice, prevented it from functioning, distorted the end results that can be expected by the proper functioning of this system that has been developed in our jurisprudence over the last couple of hundred years?

Ladies and gentlemen, the proof of that pudding is in its eating. Mr. Haldeman, Mr. Ehrlichman and others, Mr. Mitchell will stand trial. If they are innocent they will be set free. If they are guilty they will be found guilty. It is not necessary for us to judge them.

It seems to me that the situation is confusing in many respects. If it is confusing for us now after many, many months of investigations not only by your very excellent staff, but by the staff of the Senate select committee, by the Office of the Special Prosecutor and otherwise, consider how confusing it must have appeared to the President, when faced with this alarming charge, consider yourself under the circumstances. What would you have done that was substantially different? If there was a delay in terms of days, was there any real prejudice developed for the people of the United States by reason of that delay? Did not the President use judgment in wanting to know a little more about the evidentiary support for these charges before acting on them? Clearly I submit that this unfortunate, distasteful event will be brought to its just conclusion, not solely by reason of the President's conduct but by means, but certainly by reason of his cooperation and his contribution to the end result, in conjunction with the Department of Justice, and these gentlemen will be prosecuted, and the right determination I am sure will result.

But nothing in this sordid story would constitute, in my view, a warrant for the inference that the President deliberately plotted to obstruct justice, that he ordered the money paid, or authorized the others to pay it to Hunt. That just is not the fact. And the evidence, in my view, clearly shows it isn't the fact.

Mr. Chairman, I think I have talked for about an hour and a half. It has been my view that arguments such as I have made do not retain effectiveness, if they have any effectiveness at all, much beyond this period of time. I would like to say in closing that I appreciate the courtesies that the chairman has accorded me, and that the members of this committee have accorded me. I am certain that you will realize and will acquit yourself in your very awesome responsibilities with responsibility. It may be that I will not have the opportunity to address you again, and after 10 weeks I feel that we have had a relationship which I personally feel has been cordial.

I will only say this, as I said at the beginning, that the American people, in my view, and you will have to be the judges of this, not me, because when I will be finished I can get up and walk out that door, but the American people are going to want to be satisfied that a President of the United States is not going to be impeached on anything less than clear evidence or justification. And I submit that does not exist in this case.

Mr. Chairman, therefore, may I be excused?

The CHAIRMAN. Mr. St. Clair, before you are, you made reference in your response to a portion of a transcript of a recorded conversation which presumably took place on March 22.

Mr. ST. CLAIR. That's correct, sir, and I have copies for everybody here.

The CHAIRMAN. At what time did that conversation take place?

Mr. ST. CLAIR. 9:11, sir, to 10:35 a.m.

The CHAIRMAN. Mr. St. Clair, are you aware that in presenting that to this committee for the first time as a transcript, that that matter was subpoenaed by this committee, that conversation from 9:11 to 10:35 a.m., and that there was a refusal on the part of the President to turn over that particular conversation?

Mr. ST. CLAIR. Mr. Chairman, I am. But the President has authorized me to make this disclosure at this time. I don't know, Mr. Chairman. Am I to be excused or should I stay?

The CHAIRMAN. Are we going to receive the recorded conversation, Mr. St. Clair?

Mr. ST. CLAIR. Mr. Chairman—

The CHAIRMAN. My understanding was that we had requested this matter and subpoenaed a recorded conversation, and for one reason or another, my impression is that the President stated that that conversation, along with other conversations that were refused to us, were not pertinent or relevant to the inquiry. And all of a sudden this morning you make reference to this conversation.

Mr. ST. CLAIR. Well, Mr. Chairman, Mr. Dean testified, as I remember, that the President in effect authorized the payment, and that's the first time that testimony had ever come out. Mr. Dean had previously testified that nothing had been resolved.

Mr. SARBANES. Mr. Chairman, could we inquire of the conversation that took place for 1 hour and 24 minutes on the morning of March 22, how many pages of an edited transcript Mr. St. Clair proposes to submit to the committee this morning in the course of making this final presentation? In other words—

Mr. ST. CLAIR. Two and one-half pages, Mr. Sarbanes.

Mr. SARBANES. Two and one-half pages?

Mr. ST. CLAIR. Yes, sir.

Mr. SARBANES. Of this 1-hour-and-24-minute conversation?

Mr. ST. CLAIR. That is correct. This portion of it relates to the alleged blackmail.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. St. Clair, I am very interested in seeing that conversation, and, frankly, some others as well. I am wondering why it wouldn't be better if we are to be asked to accept and give credence to or value to a conversation that took place at a very relevant time, if you wouldn't make available the whole 1 hour and 35 minutes or whatever the timespan? Wouldn't that be, wouldn't that be much better so that we could see everything in context?

Mr. ST. CLAIR. Well, Mr. Railsback, first of all, of course, I don't make these decisions. There is only one person that can make them. It's the President's view that this portion relates to the blackmail allegation made by Mr. Dean, and his attitude with respect to those. I will, of course, convey to him your suggestion that the transcript, the entire transcript be made available. But, I would also say to you that the transcript is, the tape itself is available to the chairman and the ranking minority member to verify if they so desire.

Mr. RAILSBACK. Is that the entire tape?

Mr. ST. CLAIR. Yes. The same rules that were applied in the President's April 30 submission would be applicable, of course.

Mr. RAILSBACK. May I just suggest this to you——

The CHAIRMAN. Would the gentleman yield for a moment? The gentleman is aware that we are talking about a conversation that this committee subpoenaed on April 30?

Mr. RAILSBACK. I understand. I understand, right. If I could just pursue this, Mr. St. Clair. I thought you made a very forceful, articulate, fair presentation this morning. As one member, I would feel really delinquent if I don't pass to you some concerns that I have inasmuch as you are going to be leaving this room and this committee. And we do have a very important responsibility.

It is obvious I think to you, it must be obvious to you, as you sat here and heard the evidence that we heard, including the testimony of live witnesses, for instance, John Dean's testimony concerning the conversation that he had on September 15, which included a discussion about the IRS, now it's clear to me, more clear than it has ever been before that that 17-minute segment. 13 minutes of which Judge Sirica has indicated now that he believes to be relevant to the Special Prosecutor's investigation, that that's very, very relevant to our inquiry. And as one member, that frankly still wants to give the President the benefit of the doubt, it must appear to you that some of these conversations that we have subpoenaed are extremely relevant, and as indicated by the evidence, and I just wonder if you can't pass that on to the President.

And I know you can't make that decision. But I think, I think it's going to make, could make a difference in the minds of some people.

Ms. HOLTZMAN. Mr. Chairman?

Mr. ST. CLAIR. Well, Mr. Railsback, of course I will pass on your views to the President.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

Mr. Chairman, I refrained from making a point of order out of courtesy to Mr. St. Clair, since I felt he ought to present his argument as a consistent and coherent whole.

Mr. ST. CLAIR. Thank you.

Ms. HOLTZMAN. But I do think I would like to register a point of order against all statements in the summation that he made or a response that he made in which he said there is no evidence to support or there is no evidence in the record, because that does not take into account the fact that we have subpoenaed innumerable tape recordings, and we do not know what is contained therein. And therefore, I think the statement that there is no evidence is unsupported on the state of this record.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, on the point of order or whatever we are on, I would like to say this. We have problems here as we——

The CHAIRMAN. The lady has merely registered a point of order.

Mr. DENNIS. On the point we are discussing then we have problems



we are faced with here as we all know. I would like to get as much information as possible. I share somewhat Mr. Railsback's concerns. The record will show that I have voted for most subpoenas, and I have certainly worked as hard as anybody, even harder than any other member to call as many live witnesses as we can. That has been my policy right along.

Now, I think we would be making a very bad mistake not to take whatever evidence we can have.

The CHAIRMAN. I agree.

Mr. DENNIS. And we can weigh its weight, and I hope the chairman and the ranking member will go down and hear the rest of it as far as I am concerned. But, we certainly should have it. Thank you, Mr. Chairman.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. My parliamentary inquiry I would have made prior to the gentleman's argument, but the Chair was not inclined to receive comments at that time, and I hope you understand—

The CHAIRMAN. Well, I didn't want to interrupt Mr. St. Clair.

Mr. WIGGINS. Well, I understand. But, I do wish to inquire of the Chair whether or not the record is open for the receipt of additional evidentiary materials that may develop between now and the time that Congress must adjudicate the issue. I raise that because we have the possibility of further information coming as a result of the Supreme Court opinion, and we certainly ought to receive whatever information of that nature we can get.

The CHAIRMAN. Of course. Absolutely.

Mr. WIGGINS. I understand then the Chair's ruling to be that the record is not closed?

The CHAIRMAN. That is correct.

Mr. SARBANES. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. No. I withdraw my question.

The CHAIRMAN. May I state before going any further that the Chair is prepared to accept the matter that Mr. St. Clair has referred to. However, making the Chair's comments, and making them very strongly that the Chair accepts them with that reservation that the committee will have to be aware of the fact that on May 30 there was a subpoena issued for a conversation between the President and Mr. Haldeman which specified that this conversation took place on March 22, between 9:11 and 10:35 a.m., and for a period thereafter there was constant refusal on the part of the President to honor this subpoena with, as I recall his letter, the statement to the effect that none of those conversations related in any way to the inquiry, that the matter of Watergate had been completed, and that the committee had all of the information before it that it needed. And with that, Mr. St. Clair, I accept the transcript, and I want to thank you very much for having—

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN [continuing]. Having been as courteous as you have been. And we appreciate the fact that you have had a very, very difficult time, and we excuse you.

Mr. ST. CLAIR. Thank you very much, sir.

Mr. HOGAN. Mr. Chairman? Mr. Chairman, it relates——

The CHAIRMAN. Before he's excused?

Mr. HOGAN. If I may, Mr. Chairman.

The CHAIRMAN. Sure.

Mr. HOGAN. I recall some time ago Mr. St. Clair was about to present to us some material that——

The CHAIRMAN. He has.

Mr. HOGAN. He has it available, the green book?

Mr. ST. CLAIR. Yes, sir. The briefs will be concluded, including last night's testimony, and should be filed by Friday of this week.

Mr. HOGAN. Thank you, Mr. Chairman.

The CHAIRMAN. I hope. By Friday of this week?

Mr. ST. CLAIR. By Friday of this week.

The CHAIRMAN. Fine, as we would want to include them.

Mr. ST. CLAIR. I am going to go back and read. Thank you.

[Note.—The material referred to above may be found in a previously published publication entitled "Brief on Behalf of the President of the United States" released by the House Judiciary Committee in July 1974.]

The CHAIRMAN. Thank you very much, Mr. St. Clair. Thank you.

We have a short quorum on, if the members would remain for just a moment. I just had a couple of brief matters to discuss. This is a short quorum and they have already made it. So, if any of you members would want to say so long to Mr. St. Clair personally, why feel free to do so.

We have first of all a motion that I am going to entertain regarding the materials that need to be printed, other materials that may be presented to the committee, and I would entertain that motion from Mr. Donohue.

Mr. DONOHUE. Mr. Chairman, I move the following resolution and urge its adoption by the full committee. Resolved that the committee publish and upon publication release the testimony of witnesses and other evidentiary material presented on and after July 2, 1974, pursuant to House Resolution 803.

The CHAIRMAN. The motion is——

Mr. WIGGINS. Mr. Chairman, may I be heard?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I have no opposition to the motion, but it serves the purpose of permitting me to discuss a matter which I raised with you by letter today, and I am sure that you haven't received it as yet. But, I am concerned about the publication of material accumulated by our staff under its power that has not been submitted to the committee itself in the form of evidentiary material. And I do not understand that there is any authority granted by the committee thus far for the public release of raw data which was not included within our evidentiary materials. Am I correct in that understanding?

The CHAIRMAN. That is correct.

Mr. WIGGINS. I hope the Chair will persist in that ruling because I think it is appropriate, and will deter the staff from preparation of materials. Specifically I am concerned about the Strachan political memoranda which was not included within our evidentiary materials,

and it should not be released unless it is in our evidentiary materials.

Mr. DOAR. Mr. Chairman, could I just make something clear?

The Strachan political matters memoranda are being organized for the presentation as part of the record to the committee. They would not be released until the committee decides to release them, and so that they are not being prepared in the same way that the other materials were prepared.

I want to add one thing, Congressman Wiggins. With respect to a few matters in the dairy industry publication that were called to the staff's attention during the presentation, and asked to be made a part of the record, they were added to the dairy books, and the committee members will be advised of that, and are being advised of that. Other than that, there is no material being published by the staff without approval by the committee.

Mr. WIGGINS. I am comforted by the gentleman's explanation.

Mr. HUNGATE. Mr. Chairman?

Mr. HUTCHINSON. Mr. Chairman?

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I would just like to have a clear understanding of the scope of this motion. This relates specifically to evidentiary materials, and I understand from the remarks Mr. Doar just made that this would not be construed to include the political matters memoranda that is now being prepared until further action by the committee?

Mr. DOAR. That is correct.

The CHAIRMAN. That is correct.

Mr. DOAR. But, we will present it to the committee as part of the record.

Mr. HUTCHINSON. I understand that. But, this motion here would not authorize its publication.

Second, this phrase evidentiary materials, is this going to include the so-called theories materials or anything of that sort?

The CHAIRMAN. No, that's not evidentiary material.

Mr. HUTCHINSON. All right. Thank you.

Mr. HOGAN. Mr. Chairman?

Mr. HUTCHINSON. I yield to Mr. Hogan.

Mr. HOGAN. Will the material include Mr. St. Clair's summation just concluded?

The CHAIRMAN. I don't believe that that's part of the evidentiary material.

Mr. HOGAN. Will that appear anywhere, Mr. Chairman?

The CHAIRMAN. Well, Mr. St. Clair, I understood, was going to make a response available to us. This was in addition, as you know, and we considered not only giving Mr. St. Clair an opportunity to be present here, and to respond orally as the rules require, but we permitted him to make his presentation not only orally but also a detailed information. This was merely an additional invitation so that he might have an opportunity to sort of respond.

Mr. HOGAN. Mr. Chairman, I understand that. But, it seems to me that since we will have a transcript of it, that in fairness this, too, should be made a part of our printed and published record.

The CHAIRMAN. Well, we will have a transcript of it since we have the young lady who is recording this. And one thing that I would like



to make the gentleman aware of is that all of these matters that we have really dealt with have been evidentiary presentations, and the other materials presented by our staff, and I believe that it would frankly, other than what serves as merely something that the members have desired to have, that I don't think we ought to be responsible for including it as a part of the record.

Mr. RAILSBACK. Mr. Chairman?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HOGAN. If I still have the time, Mr. Chairman, then I would just make one point. I think that all of us are conscious of the historical prospective on what we do here, and I do think that Mr. St. Clair's argument, while may not have persuaded all of us, it was interesting and will be historically important I think to future generations, and I would strongly urge that it be included in some of our published materials.

The CHAIRMAN. Well, I am sure that in some way that will be available.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. I am talking about the manner in which it is going to be included.

Mr. HUNGATE. Mr. Chairman, I am waiting first.

Back to the political tricks memorandums. Do I now understand that they are available to any Member of the Congress to read?

Mr. DOAR. That's true.

Mr. HUNGATE. Is that correct?

The CHAIRMAN. What are you making reference to?

Mr. HUNGATE. What we just said we weren't going to publish.

The CHAIRMAN. That is correct.

Mr. HUNGATE. But you don't think any Member of the House of Representatives is not now entitled to read those, is that not correct?

Mr. DOAR. Mr. Congressman, I didn't say the committee wasn't going to publish it. The procedure has been, prior to the time any material is published that the chairman and the ranking minority member clear that material, and that was, as authorized by the committee, and so all of the publications to date have been reviewed or reviewed generally, and when this additional material comes forward, that will follow the same procedure, subject to the committee's will.

Mr. HUNGATE. I'm sorry. That was not my understanding of the responses to Mr. Hutchinson and Mr. Wiggins' inquiry.

Mr. WIGGINS. Would the gentleman yield?

Mr. HUNGATE. I will yield.

Mr. WIGGINS. I will be happy to clear up my understanding. There is a difference between the right of the Members to view raw data to determine its relevancy and the right of Congress to do so. That is a different issue than the release to the public of material which the Congress may well have rejected as irrelevant. I am concerned about what I would regard the abuse of our power to seize and inspect evidence which we ultimately reject under our impeachment authority. It would be an abuse to place that in the public domain if we attach no evidentiary significance to it.

Mr. HUNGATE. Mr. Chairman, if I understand our agreement here, we have made no real decision on the publication of the raw data?

The CHAIRMAN. That is correct.

Mr. HUNGATE. This is still in the hands of the committee?

The CHAIRMAN. That is correct.

Mr. HUNGATE. And the Chair and the ranking Member, but insofar as a Member, if I understand Mr. Wiggins' use of Members, you mean Members of the House of Representatives?

The CHAIRMAN. That is correct.

Mr. HUNGATE. Are free to examine the material if they see fit?

The CHAIRMAN. That is correct.

Mr. HUNGATE. Thank you.

The CHAIRMAN. The question is on the motion—Mr. Cohen?

Mr. COHEN. I have a question, Mr. Chairman. I would like to direct my remarks to you, Mr. Chairman. And in response to what Mr. Hogan said that I think that we are all aware of the historical importance of the function that we have been engaged in over the months, and I for one think that because of its historical implications that we ought to have Mr. St. Clair's argument as a part of the record as well as Mr. Doar and Mr. Jenner when they present their arguments next week in marshaling the evidence. I think that should be part of our record as well, and as long as it is understood that the record remains open, I will be more than happy to support this motion with the understanding we will have all of the arguments presented as a part of an additional record of what took place before this committee.

Mr. SARBANES. Would the gentleman yield on that?

Mr. COHEN. I yield to the gentleman.

Mr. SARBANES. It seems to me on both your point and Mr. Hogan's point, that was a matter to be resolved by the full committee in the future, that this motion that is now before us does not reach to that material and ought not to, and that we ought to go ahead and act on this motion, recognizing that we are reserving the decision on the other. I am frankly inclined to agree with the view that has been expressed about it, but I just don't think that we ought to attempt to decide it right now, and that we ought to go ahead and to act on this motion and approve this thing and move ahead.

Mr. SEIBERLING. Mr. Chairman, would the gentleman yield? Mr. Chairman, I certainly concur with what Mr. Sarbanes and Mr. Cohen said on the matter of arguments, but the appropriate time to release them is when both sides' arguments have been completed.

But, Mr. Chairman, I thought we were clear as to the effect of this resolution until Mr. Doar made the statement that the normal procedure was that additional materials would be released upon approval by the chairman and the ranking minority member, which completely confused the picture again. I understood that it is the Chair's position that all this resolution does, and that all we are going to release is material that has been presented to the committee.

The CHAIRMAN. That's correct.

Mr. SEIBERLING. Is that correct? Thank you.

The CHAIRMAN. The question—

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I would like to offer a motion to amend the motion. Stick in after the words "evidentiary material" the words "and the argument of counsel."

The CHAIRMAN. Oh, no, no.

Mr. DENNIS. Well, I certainly think that I am entitled to offer a motion, and I don't see any reason why it shouldn't be decided right now. That is Mr. Doar's argument, Mr. St. Clair's argument, everybody's argument.

The CHAIRMAN. There is a parliamentary inquiry.

Mr. SANDMAN. Mr. Chairman, I am a little bit confused, and I am not trying to be nitpicking here. But the phrase, "other evidentiary material," are we talking about all of the exhibits and all of the other things that have been presented?

The CHAIRMAN. The presentation with the exhibits, and other documents that were presented here during the course of the evidentiary presentation.

Mr. SANDMAN. Now, when we do that—

The CHAIRMAN. During the course. Now, this relates to the live witness phase of the hearing, because all of the other the committee has already acted upon.

Mr. SANDMAN. What I am thinking about, Mr. Chairman, for example, the intern having been very critical of Colson's office. I don't even know what he said, but I am just using that as an example. I can hardly see how that can be included, and I don't even know what was in it. I am talking about, for example, and I don't know what was in the critique that the intern wrote about Colson's office, but remember we had some dissertation on that, where an intern that was in his office wrote a sharp critique about how his office was functioning and what not, and I don't even know what was in it.

The CHAIRMAN. Mr. Colson testified regarding that.

Mr. SANDMAN. Is something like that going to be included in this?

The CHAIRMAN. Well, Mr. Colson testified regarding that and made reference to it during the course of his testimony, and I, and I think that it certainly would be appropriate for the members to have a right to evaluate it when it considers this presentation.

Mr. DENNIS. Parliamentary inquiry.

Mr. SANDMAN. How can we consider that being evidentiary at all? I just can't understand it. I am only using that as an example, Mr. Chairman, because I don't know what was in the writeup.

Mr. DENNIS. Mr. Chairman, parliamentary inquiry.

Mr. SANDMAN. I can't see counsel's argument being any less valuable than that kind of a document. That's the point I am making.

The CHAIRMAN. Well, counsel's response is not a response that goes to the evidentiary material, but a response—

Mr. SANDMAN. I understand.

The CHAIRMAN. Entirely apart. And this was, you must remember, this phase that we are now discussing is the testimony of the witnesses. Mr. St. Clair's response went to the totality of the presentation before us, and I think if the gentleman from Indiana would kindly reflect and reconsider he would just withdraw the amendment that he offered, because frankly, it has no pertinency, no relevancy, and I would have to frankly state that it really does not have any bearing on what we are now considering in this motion.

Mr. DENNIS. May I ask the chairman a question?

The CHAIRMAN. Mr. Dennis.



Mr. DENNIS. Does the portion of the transcript which was introduced in the course of Mr. St. Clair's argument this morning of March 22, is it embraced within the terms of this motion and will it be printed?

The CHAIRMAN. It is in his response.

Mr. DENNIS. That is right, and if the motion stands as it is, without the argument of counsel, will that then not be published at this time, or will it be?

The CHAIRMAN. It will be published with the argument of counsel.

Mr. DENNIS. Right. But, you don't regard it as other evidentiary material within the meaning of this motion?

The CHAIRMAN. That's correct.

Mr. DENNIS. Well, I insist on my motion. I think that is evidentiary material which should be in here, and I just think counsel's argument, why we have the arguments of the counsel for and against Andrew Johnson as a part of the record, and why in the world shouldn't we do it here? What's the objection?

Mr. SEIBERLING. Would the gentleman yield?

Mr. DENNIS. Sure, I yield. I don't see why we nitpick about everything.

Mr. SEIBERLING. If the gentleman offers his amendment, I will immediately offer an amendment to it to change it to provide that it will be published after the completion of counsel's argument, and those will be published separately, so you will have accomplished nothing if this amendment carries.

Mr. HUNGATE. Will the gentleman from Indiana yield, please?

Mr. DENNIS. Of course, I yield.

Mr. HUNGATE. If there is any objection to any member of this committee to the ultimate publication of Mr. St. Clair's closing argument, I don't know of it. I wonder if there is, if they wouldn't express it, because I don't think that we are talking about publishing it or not publishing it, as a committee. It will be published. It is simply a question of whether to publish it now.

Mr. DENNIS. The question is when it is going to be published, and if it will be published when it will do the President's case any good, or after we are through. That is all I want to know.

Yes, I yield to the gentleman from California.

Mr. EDWARDS. Certainly in all fairness it should be published in accordance with the usual rules of publication as we have been publishing materials from the committee, is that not correct? It should not be published before or after in violation of any of the way we have been doing things?

Mr. DENNIS. Well, I don't see why we shouldn't publish everything we have got to date.

Mr. EDWARDS. I think that's what we are doing, aren't we, as fast as they are prepared?

The CHAIRMAN. That is correct.

Mr. DOAR. It is my judgment, Mr. Chairman, that these 2½ pages is not really part of Mr. St. Clair's response, it is what he purports to be supplemental evidentiary material. And with the other material that has come to the committee with the last publication, there has to be some way to have that published too, and this should be, should be published. And with your remarks when you received it, not as part of Mr. St. Clair's argument, although it could be included in that, but

also as a separate document just as we have or would if we offered some additional things from the staff. We have an affidavit of Mr. Kehrli to offer. That would go in pursuant to the usual rules of publication.

Mr. DENNIS. Mr. Chairman, if I may say that if the suggestion of counsel is adopted, that that excerpt from the March 22 tape be included in the record at this time as evidentiary material, I would be far more inclined to defer the matter presented by the amendment to a later date than otherwise I would be.

The CHAIRMAN. Well, I might say to the gentleman that despite the fact that I think Mr. St. Clair even in presenting this other additional matter transgressed the rules once again, because—well now, just a minute. We have established rules. And the rules of the committee provide that should President's counsel wish the committee to receive additional evidence, other evidence, he shall be invited to submit written requests and precise summaries of what he would propose to show, and then the committee would make a recommendation.

I know the Chair very liberally tried to understand that Mr. St. Clair was going to submit this, and has made no objection to the fact that Mr. St. Clair has not followed the rules, but I would urge that it is not and doesn't comport with our rules and with the natural flow of information, the evidentiary material, and therefore, I would hope that the gentleman would, in keeping with what Mr. Doar has stated, and knowing that we have printed everything, and I for one don't intend to withhold anything from the public, and I hope that none of us would, that this be made, will be made a part of the evidentiary record.

But, under the reservations I am sure that all of us are going to be aware of the fact that we have to accept that with complete reservations.

Mr. DENNIS. Well, Mr. Chairman, the gentleman from Indiana is still not clear whether if he withdraws his amendment the exhibit of the March 22 conversation will or will not be published under this motion, as unamended, and I would like to have a clear answer to that question.

The CHAIRMAN. Well, that is part of the evidentiary material.

Mr. DENNIS. And as such will be published?

The CHAIRMAN. Will be published.

Mr. DENNIS. In that case I withdraw my amendment.

The CHAIRMAN. Despite the fact that it was outside of the rules.

Mr. SARBANES. I move the previous question.

The CHAIRMAN. The question is on the motion. All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

Mr. CHAIRMAN. The ayes have it, and the motion is agreed to.

Mr. WIGGINS. Mr. Chairman, not controversial I trust, I asked, Mr. Chairman, that the staff provide a small item of evidentiary material which has not heretofore been included in our materials; namely, the statements of the President which were introduced in the Judge Gessell trial of Mr. Ehrlichman with respect to his participation, if any, in the Fielding break-in.

And incidentally, we have a pending request with respect to Hunt grand jury testimony, and the staff was going to attempt to negotiate with the Special Prosecutor to get Hunt's grand jury testimony on or about March 28, 1973, and I reassert that. I hope that you will continue in that respect.

Mr. DOAR. All right.

The CHAIRMAN. Mr. Doar, how soon will it be before the committee is going to be able to—I know this is another task that the staff is going to be imposed upon to do within a short period of time, but I really do believe that that material that was referred to this morning as a set of the Ehrlichman notes, I would hope that we are able to provide for the set of notes or a comparison, the actual set of notes for examination by the members of the committee.

Mr. DOAR. There are two sets ready for examination now, and the analysis is being worked on now, so that there will be some way that the committee can look at it and get a sense of it as quickly as possible. We will probably make another eight or nine sets of it so that full sets will be available for any committee members if the committee members wish to see them over at our offices or we can get it over, we can have it brought over to a particular office.

The CHAIRMAN. And for whatever it is worth, I would urge the members of the committee to please examine these.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Along those lines, I wonder, Mr. Doar, for our understanding of what was not produced to this committee, if you could prepare the materials, prepare the materials you received from the Special Prosecutor and bracket those portions which were omitted for the President's submission to us. I think that would make it very easy.

Mr. DOAR. That is what we are doing.

Ms. HOLTZMAN. Thank you.

Mr. DOAR. There are 185 pages.

The CHAIRMAN. Mr. Fish.

Mr. FISH. Mr. Chairman, at the outset today, you told us about housekeeping matters, and then a discussion of the procedures to be followed next week, and I was wondering if you could tell me then, I understand we have the theories of the case, and what is the agenda for the committee this afternoon and Friday and Saturday of this week?

The CHAIRMAN. The committee will hold closed briefing sessions tomorrow and Friday, tomorrow and Saturday, and we will meet at 10 o'clock in the morning.

Mr. WIGGINS. Are the theories available now, Mr. Chairman?

The CHAIRMAN. The theories, or the articles, proposed articles, I understand are still in the process of being readied. I can tell you that I have examined some. They aren't really in order to be presented to the committee until tomorrow morning, but I am sure you will have a sufficient time on Friday and Saturday to examine them.

Mr. FISH. Mr. Chairman, to continue that, does the chairman contemplate then debate by the full committee starting on Monday?

The CHAIRMAN. No. The Chair recognizes first of all that there have been these delays in the information that should be available to the



committee. That has been delayed, and for that reason, and in order that the members of the committee have sufficient opportunity to examine and study the matters that come to their attention, I intend to schedule the commencement of actual debate on any resolution for Wednesday of the next week.

Now, it is my intention, and I think that the members might just consider this, but it is my intention to propose that what we might do would be to take a period of no more than 30 hours, 30 hours, and 10 of those hours would be allotted for the purposes of general debate or general discussion. This means when you break it down to not more than 15 minutes, approximately 15 minutes or more minutes for each member on the question of general debate. For the consideration of any proposed articles, there would be another 20 hours, at which time we would then, however, have voted, and I think that this is all a total of 30 hours. And actually, if you consider we would have to spend at least, well, 6 hours a day, 7 hours a day which would mean at least 5 days. And I think——

Mr. FISH. Commencing when?

The CHAIRMAN. We would probably go on through Wednesday, Thursday, Friday, Saturday, and possibly Monday, at which time we would conclude. But, it would be my proposal, my plan, that we do all this within the period of 30 hours.

Mr. FISH. Thank you, Mr. Chairman.

The CHAIRMAN. That would be in toto. Actually, so that the members may know, in total, the members would have had better than 50 minutes per member.

Mr. DENNIS. Mr. Chairman, I don't think I quite understood one thing you said. You get to the 20 hours on proposed argument, and I understood you to say at which time we would have voted?

The CHAIRMAN. Well, at the conclusion.

Mr. DENNIS. At the conclusion of the debate on the articles, then, is when we will vote?

The CHAIRMAN. Yes.

Mr. DENNIS. OK.

Mr. HOGAN. Votes on articles as they occur?

The CHAIRMAN. Seriatum, right.

Mr. DENNIS. And what is the nature of the briefing tomorrow and Saturday?

The CHAIRMAN. Well, the briefing will be by counsel who will present the theories with the proposed articles and supported by whatever evidentiary material or data.

Mr. DENNIS. It will be a basis for the articles, more or less?

The CHAIRMAN. Yes. My understanding is as well that there has been requested of Mr. Garrison a presentation, and I would hope that while we are not aware of just what that might be, that that would be ready so that we would——

Mr. DENNIS. That was the next thing I was going to ask the chairman, if Mr. Garrison would be permitted to present his also?

The CHAIRMAN. Yes, sir.

Mr. RANGEL. Who's Mr. Garrison?

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler?

Mr. BUTLER. With reference first to the information which counsel has promised us, and I recognize the pressure that you are under, but timewise I am most anxious to examine the theories as early as possible. Could you give us some possibility that we might have an opportunity to pick them up this afternoon?

Mr. DOAR. No, they are just—it is just impossible.

Mr. BUTLER. All right. Let the record show my disappointment.

Now, Mr. Chairman, I have another question. Will the reporter, will this be transcribed? I am going to have to be absent for a portion of the briefing, but I would like to be kept abreast of it, and I would like to think that that will be transcribed.

The CHAIRMAN. Oh, of course.

Mr. BUTLER. And I wanted to be certain of that.

The CHAIRMAN. Of course.

Mr. BUTLER. All right, now.

Finally, Mr. Chairman, with reference to the 10 hours of general debate, I assume we will adopt some kind of a rule which will spell this out? Will that require at that time a waiver of the 5-minute rule with reference to amendments?

The CHAIRMAN. Well, the 5-minute rule only applies to the question of hearings with witnesses.

Mr. BUTLER. All right. Thank you, Mr. Chairman.

The CHAIRMAN. And the Chair has, in an effort to try to be reasonable with time, and liberal with time, and at the same time understanding the magnitude of this problem, has thought of 15 minutes at least in general discussion and all told, it figured out at about 50 minutes per member, if each member were to use the 50 minutes.

Mr. BUTLER. Mr. Chairman, I hate to trespass so long, but one more question with reference to the 10 hours of general debate. Does it contemplate that we will be on the floor before the general debate with some kind of a motion?

The CHAIRMAN. Yes. There will be before each committee member a resolution with whatever articles are proposed.

Mr. BUTLER. Thank you, Mr. Chairman.

Mr. HOGAN. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. So that we might plan, the chairman indicated that tomorrow we would begin at 10 o'clock. Could he tell us, will we begin on Saturday at 10 o'clock as well, and the estimation termination time on Saturday.

The CHAIRMAN. Well, we would hope to, we would hope to get through within a reasonable hour. But, if the members want to go on—

Mr. HOGAN. The gentleman from Maryland has a speech that evening. I am wondering if I should cancel it or whether I should assume that I would be able to make it?

The CHAIRMAN. I would hope that it is going to be in the interest of members to be able to utilize this informal briefing session in preparation and readiness for whatever debate we contemplate the following week.

Mr. HOGAN. I appreciate that, Mr. Chairman. But, is it anticipated that it will continue on into Saturday evening?

The CHAIRMAN. Well, no, I really don't believe so.

Mr. DENNIS. Mr. Chairman?

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Mr. Chairman, I have two points and I don't want to belabor either one of them. But, I personally would be concerned with establishing in advance a 20-hour moratorium on debate on the articles of impeachment. I don't see how we can do that, inasmuch as the explaining of any potential articles is perhaps the most important part of our entire work here. And I think we have to contemplate many, many amendments to any proposal. And to say in advance that we are going to be hamstrung to 20 hours when we may not take that, but no one can say, I just don't see how we can do it.

And my second point is that I would strongly urge that we consider adopting a procedure, in effect, like we work in the House; that is, in the committee of the whole, where you amend the bill and then you delay the vote on that bill until you go back into the House, because if we begin debate on the first proposed article of impeachment and we vote on it up or down at the end of that, then if something else—the sense of drama that is now enjoyed by this committee will be lost before we get through with the 30 hours.

The CHAIRMAN. Well, the Chair is trying, is trying to suggest that as a matter of reasonableness and procedure that 20 hours seems to me to contemplate at least 4 days and that I think that if the committee seeks to extend it, the committee can by majority vote do so. But, I think that setting some time at least within a reasonable limit is entirely I think reasonable and responsible. I would hope that we follow such a proposal.

Mr. DENNIS. Mr. Chairman?

Mr. FLOWERS. What about the second point? What is the process by which you would call for votes on the various proposed articles of impeachment?

The CHAIRMAN. Well, it would be, it would have to be ad seriatum, one following the other, and the question of debate will be just debate in the first 10 hours, so there won't be any vote at that time.

But, following that, and the question of amending, and taking each, whatever articles may be proposed in sequence, and then voting accordingly.

Mr. FLOWERS. Well, that's when we will lose our audience right there.

Mr. DENNIS. Talking about the audience. Mr. Chairman—Mr. Chairman? I don't want to belabor this, I just want to be sure I have the schedule straight. Now, tomorrow and the next day, briefs, right?

The CHAIRMAN. Right.

Mr. DENNIS. Monday and Tuesday are days off?

The CHAIRMAN. Well, it may be necessary to schedule a meeting on Monday.

Mr. DENNIS. OK. but debate starts Wednesday?

The CHAIRMAN. That is correct.

Mr. DENNIS. Then you intend to run debate approximately until when?

The CHAIRMAN. Through Saturday, if not through Monday.

Mr. DENNIS. And anyway, there would be no—



The CHAIRMAN. And not Sunday.

Mr. DENNIS. Not Sunday?

The CHAIRMAN. Not Sunday.

Mr. DENNIS. So there would be no voting before Saturday at the earliest?

The CHAIRMAN. It would not appear to be, no. I don't see how we could do it.

Mr. DENNIS. For instance, I have a problem of Thursday night at home.

The CHAIRMAN. Oh, no.

Mr. DENNIS. Voting by that time?

The CHAIRMAN. No.

Mr. DENNIS. All right.

The CHAIRMAN. This is a live quorum, so the committee will recess until 10 o'clock tomorrow morning.

[Whereupon, at 12:53 p.m., the committee was recessed, to reconvene on Friday, July 19, 1974, at 10 a.m.]



# IMPEACHMENT INQUIRY

## Executive Session

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FRIDAY, JULY 19, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10 a.m. in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seilbering, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Richard Cates, senior associate special counsel; Bernard W. Nussbaum, senior associate special counsel; Evan A. Davis, counsel; and Richard H. Gill counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel, Alan A. Parker, counsel; Daniel L. Cohen, counsel; William P. Dixon, counsel; Arden B. Schell, assistant counsel; Franklin G. Polk, associate counsel; Thomas E. Mooney, associate counsel; Michael W. Blommer, associate counsel.

The CHAIRMAN. The committee members will please take their seats. We are going to allow the cameras to take one picture of the committee.

OK, thank you gentlemen.

John, are those documents being distributed?

Mr. DOAR. We thought we would wait until the press was through.

The CHAIRMAN. Let's have them distributed now.

Mr. DOAR. Could you distribute the materials?

The CHAIRMAN. I would like to advise the committee that these documents that are being distributed will be made public in order to assure that they won't just be released piecemeal, and I have assured Mr. Hutchinson that the document that will be presented by Mr. Garrison will also be made public as such.

So, I would advise Mr. Doar that as soon as possible after this morning's presentation that these documents be released to the press.

Mr. RANGEL. Mr. Chairman, has Mr. Garrison been established for



the record? I know that you referred to him several times as making a presentation.

The CHAIRMAN. I have been advised by Mr. Hutchinson that Mr. Garrison has been requested to present a memorandum. Mr. Garrison has been requested to prepare a presentation of arguments which he will make, and I don't know whether they are going to be ready until tomorrow some time; is that correct, Mr. Hutchinson?

Mr. HUTCHINSON. Mr. Chairman, they probably will not be ready until Sunday night. Is that right, Mr. Garrison?

Mr. GARRISON. Yes, Mr. Chairman, and ladies and gentlemen of the committee. After taking an inventory of the rate of progress of the staff members working on that memorandum, I recommended to Mr. Hutchinson that we not attempt to have the memorandum ready for distribution before Sunday night or Monday morning, rather than doing it piecemeal, because as the members are aware, this project was only instituted in the past few days, and accordingly, any presentation that I might make to the committee today and tomorrow would be strictly oral. And frankly, I wouldn't anticipate that it would be very extensive at that.

The CHAIRMAN. Mr. Doar, will you kindly proceed? And before you do, would you kindly, first of all, advise us as to which documents contain what so that the members may be able to follow you? And, as we have done in the past, it is my hope that the committee will follow the procedure of permitting Mr. Doar to make this presentation, which I believe he has established would take about an hour. Mr. Doar, an hour?

Mr. DOAR. Perhaps a little longer.

The CHAIRMAN. A little longer. And then Mr. Jenner will join you. is that correct?

Mr. DOAR. That is correct.

Mr. SMITH. Mr. Chairman, what is to be released to the press?

The CHAIRMAN. These draft Articles of Impeachment, together with another notebook which contains the actual detailed material which supports the Articles of Impeachment on which the proposed articles are based.

Mr. SMITH. They will be released to the press?

The CHAIRMAN. Yes.

Mr. SMITH. Has Mr. St. Clair's argument yesterday been released to the press yet, Mr. Chairman?

The CHAIRMAN. That hasn't been. That's a part of the transcript.

Mr. SMITH. Isn't this going to be a part of the transcript?

The CHAIRMAN. No; this, as you will recall, Mr. Smith, is the committee staff's presentation. Mr. St. Clair's argument or response that he made is going to be made a part of the total hearings when released accordingly.

Mr. DENNIS. Mr. Chairman, is it fair to release draft articles before we adopt them?

The CHAIRMAN. Well, they are designated as proposed articles. They are not anything that anyone will say is the product of the committee, of what the committee accepts or doesn't accept, and it's not unlike any other document or resolution that is considered for purposes of debate before the House.

Mr. DENNIS. I would respectfully submit, Mr. Chairman, that it is quite all right to have that here in the committee and to debate it, but it is prejudicial to the case to put it in the papers as an unadopted draft more or less of the committee. I don't think you ought to do that.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, members of the committee, two books have been distributed to you this morning. One is a small book titled, Draft Articles of Impeachment. This is for your study and examination and consideration. There are five sets of proposed articles. They differ in form to some extent, they differ in substance, but they largely overlap with respect to theories of impeachment. The purpose of distributing the draft articles was to give the committee the opportunity to consider various forms of articles and various substantive provisions so that the committee would have today and tomorrow the opportunity to examine a wide range of possibilities in connection with their deliberation.

It was our thought, Mr. Jenner's and mine, that over the weekend we would, in an attempt to reflect members' views, try to work through these various articles to see if there were certain draft articles that met, in our judgment, the best reflected judgment and wisdom of the committee.

I would say to you that you should mark up your books on the draft articles, and that it is very easy to take one article out of one of the sections, there are five different sections, another article out of another section, strike language from one section, and it is designed to serve you, to be helpful for you, and at the same time to reserve for you the opportunity to consider various choices of words and various manners of presenting articles of impeachment.

The other book that we have distributed to you is called a Summary of Information, which is briefly in four parts, and not all of the parts are in the book yet, it will be by noon, or when you get back. We will ask you to leave your books at your desk, or just before the noon recess. That is the section on abuse of power, and a section dealing with criminal statutes, which some members indicated that they would like to have to consider so that they could see how criminal statutes relate to the overall picture.

And it would be our thought, Mr. Jenner's and mine, that in the next few days out of this summary of the evidence we would produce for you a far shorter document that sets forth our judgment, the law, and the ultimate facts and conclusions that would support whatever position the committee desired to take or to consider when they went into public session next Wednesday.

Now, I would like to speak to you briefly about a kind of a broad overview of the case.

Mr. SEIBERLING. Mr. Chairman, parliamentary inquiry before we begin.

The CHAIRMAN. Mr. Seiberling, I would hope that we would just permit Mr. Doar to go on. Any parliamentary inquiry—

Mr. SEIBERLING. This does not relate to his presentation, but to the matter which was discussed before. Has the question of releasing the draft articles been decided? I thought Mr. Dennis raised the question of substance which the committee—

The CHAIRMAN. Mr. Seiberling, that was decided.

Mr. SEIBERLING. Well, I think it's a very unfortunate decision.

Mr. DENNIS. Mr. Chairman, may I be recognized for an inquiry?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I thank you, Mr. Chairman. I have no desire to interrupt Mr. Doar. However, I don't understand that that matter has been decided. I think at the appropriate time, and not now, but after Mr. Doar has concluded, that the committee should consider that matter, and I would hope that that would be done. That was my theory. I haven't waived anything, and I think it takes a committee action to release that type of material. I think it's a very serious question. I think we ought to hear Mr. Doar, but I agree with the gentleman from Ohio, that we haven't decided that matter, and it's got to be decided, but not by you in this case but by vote, I would respectfully suggest.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, before I begin I would like to say to you that what you have before you and what you have had before you for the last 6 months is the product of the work of 100 people. I think it's been a cooperative, unified group of 100 people, not all of us bringing to this task the same views, the same backgrounds, the same biases, conscious or unconscious. But, your staff, as I say, has worked together long and hard on what you are going to have now and what you have had. It is not my product. It is not Mr. Jenner's product. It is not the product of any one individual, but it is the best that all of us, all of us on your inquiry staff can give to you. And that includes Mr. Garrison, and the other members of the minority staff who have undertaken this special project, with which I fully agree. But, I wouldn't want it to be said that the work product, that the hard work of digging out the facts and testing the facts and measuring the facts, the logic, the common sense of the facts, whether they were consistent, whether they made sense, that what is in this product has not been the work of every single member of your inquiry staff.

Now, what we are trying to do for you, as we understand our direction, is to assist you in finding out what has happened with President Nixon's administration as President, and why it happened so the committee can perform its inescapable constitutional responsibility in a way that is explicable now and explicable in the future to the American people.

As an individual, I have not the slightest bias against President Nixon. I would hope that I would not do him the smallest, slightest injury.

But, I am not indifferent, not indifferent to the matter of Presidential abuse of power, by whatever President, nor the identification and proof of that abuse of power, if I believe that it has existed.

And if, in fact, President Nixon or any President has had a central part in the planning and executing of this terrible deed of subverting the Constitution, then I shall do my part as best I can to bring him to answer before the Congress of the United States for this enormous crime in the conduct of his office.

If any President, if President Nixon or any President has committed high crimes and misdemeanors against the Constitution, then there has been manifest injury to the confidence of the nation, great prejudice to the cause of law and justice, and subversion of constitutional government.



Members of the committee, for me to speak like this, I can hardly believe that I am speaking as I do or thinking like I do, the awesomeness of this is so, is so tremendous. But, with the awesomeness of the task it seems to me that the careful inquiry that you have made, lasting the last 6½ months, has been no disservice, but rather great service to the American people.

Let me speak for a minute about Mr. St. Clair's response. Mr. St. Clair said to you you must have clear and convincing proof. Of course there must be clear and convincing proof to take the step that I would recommend this committee to take, not as a standard for this committee, and again I think I can talk in shorthand, as Mr. St. Clair said, because we are all lawyers, not as a standard. And I must be also careful here because there is a political factor in your decision that there is not nor could there be in mine.

But, the concept is clear, as I understand it, to all of us as lawyers. That is, that you don't go forward in serious matters unless you are satisfied in your mind, and heart, and judgment that legally and factually, reasonable men acting reasonably would find the accused guilty of the crime as charged.

Now, that's different than the standard, but so far as a practical matter I am saying, of course the proof must be clear and convincing. It is just a matter of prosecutorial judgment or legal judgment, or congressional judgment. Of that I have no doubt.

Now, as I listened to Mr. St. Clair yesterday, and I have listened to him before, I must be candid with you that I have had this one observation. It has occurred to me time and time again that Mr. St. Clair has things upside down. He's had things upside down throughout these entire proceedings.

Mr. LATT. Mr. Chairman? Mr. Chairman? Mr. Chairman, I don't like to object, but it seems to me that these statements outside Mr. St. Clair's presence are uncalled for, and I think Mr. Doar can make his presentation without attacking Mr. St. Clair.

Mr. BROOKS. Regular order, Mr. Chairman.

Mr. LATT. That is regular order.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I apologize. I apologize, Mr. Latta. I don't mean to attack Mr. St. Clair. Personally, I have nothing but the highest respect for him. But, I am talking about his concepts, his theories of the case, and I just want to say that, and it seems to me that his concept has been that the enormous power and authority of the Presidency, it was permissible to use that on behalf of an individual who might be the subject of criminal charges. But, that is my opinion and only my opinion, really; it is the facts, direct evidence, circumstantial evidence, time tested inferences, and, of course, judgment and common sense in the analysis of the factual information that we are trying to present to you.

Well, yesterday when I listened to Mr. St. Clair's argument and followed its symmetry and logic, I found myself writing in the margin of my notes, as incident after incident flashed back through my mind as to some of the things that Mr. St. Clair dealt with and didn't deal with, I thought to myself, if what Mr. St. Clair says is true, then why, why did that happen. Why did this other incident happen. Some of the instances, and I am just going to touch on a few, seem to me inexplic-

cable in terms of the picture or the portrait of Mr. St. Clair sketched for you.

I think everyone wants to believe our President. I wanted to believe that he had nothing to do with Watergate. But, event after event clicked through my mind, events that seemed, as I say, totally inexplicable within the logic of the case in the response of the President's lawyer.

What was his logic? As I see it, Mr. St. Clair argued that the proof showed that President Nixon believed his policy as President was to be carried out, right or wrong. In the ITT matter, you remember he said he was the elected official. It was his right and responsibility to make the judgment; that the country expected the President to take action which in his judgment he felt sound to protect the country; that he was a President concerned with national security; a President victimized by the stupidity of faithful but less-than-average subordinates, fooled by men into believing that they were innocent of an involvement, and mistaken in his judgment perhaps as to how to act, but acting humanly, too slow perhaps, but doing the right thing eventually in upholding the Presidency, the Constitution, and there having been no real harm done to our country.

Now, when I say the why, I thought back, I thought back to a number of things. The first thing that occurred to me was the President's dictation on the evening of March 21. During the evening of March 21 the President dictated his recollection of that day. You remember that memorandum. He dictated, he discussed the information that he had received from John Dean that Jeb Magruder was likely to acknowledge to the Watergate prosecutor that he had committed perjury, and that that would implicate his associates, John Mitchell, Mr. Strachan and also possibly Mr. Haldeman.

He said that John Dean felt he was guilty of some criminal liability due to the fact that he had participated in actions which resulted in taking care of the defendants under trial. Dean was concerned, the President said, because everybody was getting their own counsel, looking out for themselves, and as the President said, one would not be afraid to rat on the other.

The President said that Mr. Haldeman backed Dean up on this and advised the President that even Magruder would bring Haldeman down.

And then the President said, you know, to himself, Mr. Haldeman's selection of Jeb Magruder is a hard one to figure out. He said Bob made few mistakes, but in this case, Rose was right. He picked a rather weak man, regardless of his appearance, who really lacked it when the chips were down.

He said to himself, the one option is perhaps, taking it to a grand jury, but not for his key aides to appear, but he said that if they don't do that that puts the buck back on the President. And he also saw very grave danger that somebody like Hunt was going to blow.

He recognized Hunt's problems. He needed \$100,000 to pay attorneys and handle other things, or else he was going to do and say things that would be very detrimental to Colson and Ehrlichman. The President labelled these in Dean's words as blackmail. He recognized that Hunt was in a bad position, he might be figuring on the benefit to himself by turning state's evidence.

The President said he felt bad because all of these people had done what they had done with the best of motives. He said he didn't think that Haldeman and Ehrlichman actually knew about the actual bugging of the Watergate. He knew that Dean didn't know. But, what he figured happened was it was Colson who was the pusher, and the driver, had pushed Magruder on behalf of Hunt and Liddy, and had followed what the President termed their natural proclivities, and taken that extra step and gotten everybody in trouble.

He said, he told himself how he learned about the Ellsberg break-in, and he said that Ehrlichman said he was about three or four steps away, but that Krogh had a problem that put him in a straight position of perjury. The President remarked that it would be a tragedy because Krogh was involved in national security work, nothing to do with Watergate.

He said finally that Strachan was really courageous. Strachan had knowledge of the matter, and according to Dean, he had transferred the \$300,000 that Haldeman had, back to the committee. Then he said finally John Mitchell was coming down in the morning so that they could figure out what to do next.

Now, that was what he dictated to himself that night.

Presented, confronted with serious charges of obstruction of justice by his key aides and associates, on the next morning, he called his Attorney General and he talked to him. What did he say to his Attorney General? He said to his Attorney General he would like him to give Senator Baker some guidance, he would like him to hold Baker's hand, to babysit him, starting like in the next 10 minutes.

The next day he called his Director of the FBI and he talked to him. That was after Mr. McCord had read his letter in open court, and he called his Director of the FBI and he gave him no information, he gave him no facts, no allegations, but he reminded him that he had told him in early July, Pat, I told you to conduct a thorough and aggressive investigation.

And then I thought of Henry Petersen, and that remarkable 10 days between the 15th and the 25th of April, and again I asked myself why. Here we had Henry Petersen dealing directly face to face and man to man with his President, the chief law enforcement officer of the country with respect to the Watergate affair. The present Attorney General had recused himself. Mr. Petersen himself was the President's Attorney General. They spent in those 10 days seven, eight, nine meetings, 20 phone calls. During that time Mr. Petersen was very forthcoming with his President, told him everything that was being developed, not the details of the grand jury information, but he sketched out sufficient so that the President had a clear idea of the nature of the charges that were being brought against the President's men, and an outline of the facts that would support those charges.

On the 10th day the President met with John Ehrlichman and H. R. Haldeman at noon for 2 hours. Following that meeting the President directed H. R. Haldeman, one of the two men that Mr. Petersen had been telling him for the last 10 days was a subject of this criminal investigation, and very likely, very likely to have criminal charges brought against him, and what does the President do? The President directs Mr. Haldeman to ask for some 20 of the tape recordings and to go and listen to the tape recordings all afternoon that day.



And the President—it is explicable perhaps of the President to call in some independent person to listen to the tapes and to test and see what exactly was said on those tapes so the President could review his recollection. This is the 25th of April. This is the 25th of April, and on that day Mr. Haldeman listened to the tapes and made detailed notes for 3 hours that afternoon, and then he reported back to the President and talked to him for another hour after that.

And then the President's chief law enforcement officer, the man charged with investigating this matter, comes in and sees the President for 1 hour and 20 minutes.

Does the President tell Mr. Petersen that I have a tape recording system that will assist you and assist you in getting to the bottom of this? Does the President tell his Attorney General, his chief law enforcement officer that Mr. Haldeman has been listening to the tapes, the man Mr. Petersen says is a suspect, the subject of this investigation? He does not.

Mr. Petersen and he discuss generally, and maybe on that occasion, certainly on an occasion the day before or the day after, the President gives Mr. Petersen his view of what he and John Dean talked about on the 21st about the payment of the money and how he had told John Dean after drawing him out, in a series of questions, as was his custom, that that was wrong.

I find that also inexplicable within the logic of Mr. St. Clair's argument.

A third example, and as I say, these are just examples that I just touch on briefly, a third example is the events of the 20th of June 1972. On the 20th of June 1972, it was 3 days after the Watergate break-in. You remember when the Watergate break-in occurred there were three centers of government at that time or political activity at the direction of the President.

The President and his party, that is, Haldeman and Ziegler, were at Key Biscayne. John Ehrlichman and Gordon Strachan and Higby were in Washington. John Mitchell, Mardian, LaRue, Magruder were in Los Angeles. We will develop for you the events and the activities of each of these groups between the 17th and the 20th of June. For now I want to only mention just briefly the 20th.

On the morning of the 20th, Mr. Haldeman, and you have got this all in the books, the logs and everywhere. Mr. Haldeman meets with Ehrlichman and Mitchell at 9 o'clock in the morning. Dean and Kleindienst join that meeting, and they meet from 9 to 10 o'clock. This is the first day that the President has come back faced with a possibility of certainly a very serious scandal within his administration.

What does the President do while his people, his key advisers are discussing this matter? The President is alone in his office, except for a 3-minute talk with Mr. Butterfield during that morning until John Ehrlichman comes in and talks to him about 10:30. He does not participate, does not inquire, does not question, does not search out for facts from John Mitchell, or Richard Kleindienst, his Attorney General, or Mr. Ehrlichman who had been assigned to the case the day before to make an investigation, or 2 days before, or from John Dean who had been called back to get into it.

It is not until, it is not until 11:20 this morning that he has his first discussion, because there was no discussion with John Ehrlichman on the tape that the Special Prosecutor requested that went to court, and Judge Sirica found that there was no discussion of Watergate on that tape, so the President has no discussion with anybody until he has this discussion with Haldeman at 11:20 that morning. And he has an 18½-minute discussion with Mr. Haldeman. We know that it was about Watergate, and then a year and one-half later that tape has been erased.

Those three things, plus one more that I want to mention to you, and that is that when you look into this, and think about this, and look at what everyone of the officials knew you ask yourself why wasn't Gordon Liddy fired? Why wasn't Gordon Liddy fired? It's just inexplicable within the logic of Mr. St. Clair's argument.

Now, I want to turn to the outline of this brief, and I want to call your attention to what President Nixon said on April 30, 1973. And it's in the introduction to the Watergate section of the brief. He said:

In recent months, members of my administration and officials of the Committee for the Re-Election of the President—including some of my closest friends and most trusted aides—have been charged with involvement in what has come to be known as the Watergate affair. These include charges of illegal activities during and preceding the 1972 Presidential election and the charges that responsible officials participated in efforts to cover up that illegal activity.

Last June 17, while I was in Florida trying to get a few days rest after my visit to Moscow, I first learned from news reports of the Watergate break-in I immediately ordered an investigation by appropriate government authorities. On September 15, as you will recall, indictments were brought against seven defendants in the case.

As the investigations went forward, I repeatedly asked those conducting the investigation whether there was any reason to believe that members of my administration were in any way involved. I received repeated assurances that there were not. Because of these continuing reassurances, because I believe the reports I was getting, because I had faith in the persons from whom I was getting them, I discounted the stories in the press that appeared to implicate members of my administration or other officials of the Campaign Committee.

Until March of this year, I remained convinced that the denials were true and that the charges of involvement by members of the White House staff were false. However, new information then came to me which persuaded me that there was a real possibility that some of these charges were true, and suggesting further that there had been an effort to conceal the facts both from the public, from you and from me.

President Nixon, before entering on the execution of his office has twice taken, as required by article II, section 1, clause 7, of the Constitution the following oath:

I do solemnly swear that I will faithfully execute the Office of the President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.

Article II, section 3 in article II of the Constitution requires that the President "shall take care that the laws be faithfully executed." Under the Constitution, the executive power is vested in the President. But, of necessity, the President must rely on subordinates to carry out his instructions in the execution of his office.

In his statement of April 30, President Nixon told the American people that he had been deceived by subordinates into believing that none of them were implicated and that none had participated in the efforts to cover up. The President said he recently received new in-

formation that persuaded him that there was a real possibility that some of the charges were true and he declared his determination to "get to the bottom of the matter."

Fifteen and one-half months later this committee is now faced with the responsibility of making recommendations whether or not the House of Representatives should exercise its constitutional power of impeachment.

And the critical question in the Watergate matter, it seems to me, what the committee must decide, is whether the President was duped by his closest political associates or whether, in fact, they were carrying out his policies and his decisions. I think this question must be decided one way or the other.

In short, the committee has to decide whether in his statement of April 30, the President was telling the truth to the American people or whether that statement was part of a pattern of conduct designed not to take care that the laws were faithfully executed but rather to impede their faithful execution in the President's personal interest and in his behalf.

This committee has found that much of the evidence pertinent to this question and other questions is within the custody and control of the President. In defiance of subpoenas legally authorized, issued and served by the committee, President Nixon has denied the committee access to this evidence. Nevertheless, the committee has considered evidence that is substantial, and this report summarizes that evidence.

Now, when we consider this evidence, we must proceed with caution. We must not find the President responsible for offenses of others. But likewise, we must not forget that we are dealing with an awesome crime, a constitutional crime of high crimes and misdemeanors.

Now, I would like to talk just a minute about conspiracy. You know the crime of conspiracy consists of several distinct elements.

**Mr. BUTLER.** Are you referring to any part of the book?

**Mr. DOAR.** No, these are just my notes. That will be in the material you will get this noon. It hasn't yet been printed.

**Mr. BUTLER.** Thank you. Excuse the interruption.

**Mr. DOAR.** There must be a combination of two or more persons to constitute a conspiracy. The person may plot or plan alone, but he cannot conspire alone.

The second element is that there must be a real agreement or a confederation with a common design. Mere knowledge, or negative or passive acquiescence is not enough. The agreement need not be in writing. It usually is not. Most often in these kinds of cases, as you all know, it is a matter of inferences deducted from the actions of the conspirators.

The third element is the existence of an unlawful purpose. Anyone who takes part in any part of the conspiracy is liable as a conspirator. What that means is that if four or five individuals join together for an unlawful purpose, that if a sixth individual comes along later on, and casts his lot, as the court cases say, joins with the conspirators, he is as much responsible for the acts of the conspiracy and the subject of criminal liability as are the other five.

I am sure that this is all very, very clear to all of you as lawyers.

The point I want to make, however, is that in this case, as I view it, this is not a conspiracy case. This is not a conspiracy case. I don't



believe that it is possible to have a conspiracy involving the President of the United States. The President of the United States is different. He is supreme because of his awesome power granted to him under the Constitution. Those that work for him as subordinates are more extensions of him than co-conspirators if there is a crime. I make that distinction, because I think it is an important one as we review the evidence.

This is not to suggest that the matters, the seriousness or the wrongness of the conduct that occurred is not similar to that which occurs in a criminal conspiracy. But, you just don't have co-participation. You don't have co-equals when you are dealing with the President of the United States. There is just one President, and one man when he is using his official, or performing his official duties, that is in charge and directs the operation. And the other people that serve him as subordinates and associates, as I say, are extensions of that one man.

We all know that in cases of this kind that the patterns are the same whether it involves the question of impeachment of the President for abuse of power or whether it involves the question of co-conspiracy, that there is much circumstantial evidence that you have to look for. It is understandable that crimes of impeachment, at least the ones that we are considering today, must be proved in that way because the essence of the crime is concealment, duplicity, dissembling, pre-requisites to the success of the unconstitutional venture.

Now, there is another part of this proof that I think is important and that is that we have to distinguish as we go through the facts the difference between decisions and executions of the decisions.

The President can establish a policy, can lay out a broad plan that there will be a certain cover-up.

Then in executing that cover-up, the means used, the execution of that, will be carried out by subordinates.

And one of the difficulties that we have, in analyzing this case it seems to me, is that we first have not looked at the Presidential decisions, but we have looked at the means for carrying out those decisions.

We have gotten into such questions as payments and perjury and interference with official investigations, all means of carrying out this plan rather than analyzing whether, in fact, the President established the plan. When you get into the proof and try to find the proof of the means, you find yourself down in the labyrinth of the White House in that Byzantine Empire where "yes" meant "no" and "go" was "stop" and "maybe" meant "certainly," and it is confusing, perplexing and puzzling and difficult for any group of people to sort out. But, that is just the very nature of the crime, that in executing the means, everything will be done to confuse and to fool, to misconstrue so that the purpose of the decision is concealed.

Mr. WIGGINS. Mr. Chairman. Mr. Chairman, may I ask a word of clarification only?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. For my understanding only, Mr. Doar.

When you use the word crime, are you using it in the sense of a statutory crime, or are we talking about a constitutional crime?

Mr. DOAR. I am talking about a constitutional crime, but I am emphasizing, by using the word "seriousness," that it is similar in gravity, it has the quality of conduct that is in the judgment of the

vast majority of the people now, and since this country was founded, wrong, bad and improper.

Now, as I say, we are going to go over a great deal and try to help to put together and fit together the circumstantial evidence. Two of the young—not young, but two of the best people we have, or three of the best people we have, Mr. Cates, Mr. Davis, Mr. Garrison, will be talking about circumstantial evidence and its meaning to you as we go through this proceeding. But, what I want to talk about first is direct evidence because yesterday, Mr. St. Clair said there was no direct testimony that the President directed this plan of the coverup. And I want to state my thesis, my conviction, my judgment now.

My judgment is that the facts are overwhelming in this case that the President of the United States authorized a broad, general plan of illegal electronic surveillance, and that that plan was put into operation by his subordinates.

Of course, he did not know of the actual facts that the Watergate had been broken in on the 17th of June. There is no proof that he even knew that there had been a bugging operation going on there, no clear and convincing proof, although there is some reference in the transcript that he had some knowledge that information was coming from an intelligence operation. But, with respect to the plan, with respect to the plan, I say that decision came direct from the President, implemented through his two closest associates, Haldeman and Mitchell. Following that, I say that he directed, made the decision, the President made the decision to cover up this shortly after the break-in on June 17 and he's been in charge of the coverup from that day forward.

Now, what is direct—

Mr. LATTI. Mr. Chairman, point of clarification.

The CHAIRMAN. Mr. Latta.

Mr. LATTI. As you go along on this direct evidence, would you cite the authority if you have it?

Mr. DOAR. Yes, I would.

Mr. LATTI. I think this is pretty important on this direct evidence.

Mr. CONYERS. Mr. Chairman, can't Mr. Doar proceed without interruption in the same way that we permitted Mr. St. Clair, in fairness?

The CHAIRMAN. Well, I think that this is important, and I think it will be helpful to all of us.

Mr. CONYERS. What I am saying, Mr. Chairman, is perhaps we ought to waive points of clarification until after the gentleman has made his presentation. We didn't raise clarification yesterday.

Mr. DOAR. On the morning of March 21, 1973, just before the meeting ended—it is on page 129 of the book of transcripts—and the President is speaking and he says, and Haldeman and Dean are there, and he says:

All right. Fine. And, uh, my point is that, uh, we can, uh, you may well come—I think it is good, frankly, to consider these various options. And then, once you, once you decide on the plan—John—and you had the right plan, let me say, I have no doubts about the right plan before the election. And you handled it just right. You contained it. Now, after the election, we've got to have another plan, because we can't have, for four years, we can't have this thing—you are going to be eaten away. We can't do it.

Now, during that same conversation and in a number of other conversations, the President refers several times to the containment, the

containment. Containment was the plan, containment was the decision. Containment was the decision that was made early on, shortly after the break-in.

On the 21st of March, he talks about having John Mitchell come down the next day. It's urgent he come down. Why does he want him to come down? He wants him to come down so that they can have a new strategy, not to develop for the first time a strategy, but to have a new strategy. All of that is direct evidence that the President directed and made the decision to cover up back shortly after the break-in.

Now you move back to the September 15 conversation, and I won't go into that, but I say to you, anyone reading that as a whole, and taking into consideration what the President knew at that time, can only conclude that that too is direct evidence that the President made the decision to have a plan of containment or cover-up shortly after the break-in.

You remember that when John Dean comes into the room, he says: "Well, you have had quite a time, John, you have finally got Watergate on the way." And he says, John Dean says: "Quite a three months."

In the President's transcript, the quote "quite a three months" which happens to go right back almost to the 17th of June, it's not there. And then you read the June 30 excerpt of the transcript and you see the discussion between Haldeman and Mitchell and the President. And if that isn't direct evidence of a Presidential decision to cover up, then I am badly mistaken.

So, those are direct evidence, proof of what I say is the matter that you have to consider, and weigh and decide in connection with the Watergate part of this case.

Now, to briefly outline to you the summary of this that I have made, if you will look at the outline——

MR. HOGAN. Mr. Chairman, I hate, I really hate to slow it down, but, Mr. Doar, if you could give us the citation similar to these you just gave us for the statement where you say——

MR. CONYERS. Mr. Chairman, I wish to register an objection.

MR. HOGAN [continuing]. Facts overwhelming that the President authorized the overall plan of electronic surveillance, could you give us the citation of that?

MR. CONYERS. Mr. Chairman?

THE CHAIRMAN. I believe that Mr. Doar should make his presentation and I think that the citations will all be presented in due course.

MR. DOAR. The citation of that is set forth in the second section of the brief called Approval of Political Intelligence Plan Including the Use of Electronic Surveillance. That's circumstantial evidence, Mr. Hogan. I don't purport and I didn't mean to suggest there was direct evidence of that. There is not, but if you look at that evidence, I believe it to be clear and convincing.

At any rate, with respect to the contents of the outline, if you look at the very beginning of the book, the first material deals with Watergate.

MR. SMITH. Mr. Doar, which book?

MR. DOAR. I am on the Summary of Information the first page. And if you look there, you will see that section 1 is the Watergate A through J. Among the points that I want to call your attention par-



ticularly to is Section I. The President's Contacts with the Department of Justice, March 21 through April 30, and also the Section E, Containment—July 1, 1972, to the Election.

The reason that I set those forth and mention those is that as we have presented this to you, as we have understood our responsibility and our assignment, we have not given you any help in analyzing the Presidential transcripts, either the ones that we have recordings in this book of or in the blue book. We took it—Mr. Jenner and I took it to be our instructions that you wanted to have no filtering of that information between you and the words that the President actually spoke with his associates. You will remember that we did not characterize those conversations, did not suggest to you what they proved or did not prove. And that is one of the reasons why it has been so difficult for you to work through the material which we have given to you because this and this book are essential to your understanding of this case. And what we have tried to do, in the best way we can in this book, is to pull that together in an orderly way for your consideration and to summarize, to quote, to cite, to pull together fairly, objectively, forcefully if we believe that force is required, in a way that would be helpful to you in making your decision.

Now, I will summarize with just one more observation.

I realize that most people would understand an effort to conceal a mistake. But this was not done by a private citizen, and the people who are working for President Nixon are not private citizens.

This was the President of the United States. What he decided should be done following the Watergate break-in caused action not only by his own servants, but by the agencies of the United States, including the Department of Justice, the FBI, the CIA, and the Secret Service.

It required perjury, destruction of evidence, obstruction of justice, all crimes. But, most important, it required deliberate, contrived, continued, and continuing deception of the American people.

It is that evidence, that evidence, that we want to present to you in detail and to help and reason with you, and this summary of information is the basis, or a work product, to help you.

I appreciate your giving me the opportunity to express these views. And, Mr. Chairman, that concludes my statement.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman, and thank you ladies and gentlemen.

I had an evidentiary commentary to make today and I have decided not to make it. I am going to talk about this matter, but not make the presentation that I had prepared the last couple of days. The reason for that is that I do not want my junior, Mr. Garrison, to be influenced by his senior in his senior's comments in summation of the evidence. I ask your leave, Mr. Chairman, and members of the committee, to permit me to defer the statement that I had in mind until that fine young lawyer, Mr. Garrison, has completed his presentation, uninfluenced by me. I do not know one word of what he is going to say and I advised him that I did not wish to know.

Nor, as the responsible lawyer that he is, has he asked me, as he said to his great credit when the assignment was given to him to prepare a pro and con presentation, that he had better not look at the staff presentation so that he would not, in turn, be influenced by it.

But, there are some things I wish to say in connection with this particular matter. These are not prepared comments. They will be *ad lib*. They are only thoughts that have come to me as Mr. Doar was speaking. They will relate in large part to Mr. Doar's presentation.

First, I wish to say to all of you that what Mr. Doar has said he has spoken not only for himself but for me as well, not only a member of the staff but as Albert E. Jenner, Jr., a member of the bar of this country.

I wish to emphasize with you that the staff has been an organized, single unit, including Mr. Garrison, who worked willingly and exercised fine leadership primarily by way of administration, which I could not undertake.

The summary evidentiary presentation to be made to you in the next few days is a staff presentation, nothing partisan about it whatsoever.

Each of you, when admitted to the bar of this country and when you became a Member of Congress, took the same oath that Richard M. Nixon took when he became President of the United States. You swore, as did he, to preserve, protect, and defend the Constitution of the United States. You are presently engaged in the discharge of that responsibility. You are inquiring as to whether the President has been true to the oath.

We are all imbued with the awesomeness of this, not awesomeness in the sense of fear and misgivings, but the kind of awesomeness that was present in 1787 in a small gathering of dedicated men who were creating a new Nation from scratch. They were wrestling with all of the problems that were brought to your attention by the staff's presentation originally as to impeachable offenses. From "The Federalist Papers" and the notes of Madison, sincerity and dedication characterize every moment, every line of the Nation-creating Convention of 1787. But you need not stop there. There was also brought to your attention by staff the debates in the ratification conventions of the 13 States respecting the proposed Constitution as well as the Bill of Rights. What is more, ladies and gentlemen, the members of the First Congress of the United States, your first counterparts, also played a part in creating this country. They met in 1789 and promulgated the Bill of Rights for action by the States. What is before you is whether that country and that Constitution have been seriously endangered; whether institutions of our free and open society have been adversely affected by conduct of the President of the United States.

In recent days and recent weeks I have detected more and more concern on your part, as good lawyers as well as responsible Members of Congress of the United States, respecting the 220 million people you represent; their liberties, their constitutional rights and privileges and those as well of Richard M. Nixon, both as President and as a citizen. I have no animus toward him. In the 1960 campaign, I was cochairman, as I recall, of Mr. Nixon's Lawyer's Committee for Illinois, and in the 1964, 1968, and 1972 campaigns I was a member of Nixon's Lawyer's Committee for Illinois working for his election and reelection as President of the United States. So, I have no animus.

May I say that it has been a tremendous honor to me, to have been selected to assist you, just to bring to bear the few skills I have to aid

you to discover the truth and to reach your ultimate judgment in this matter.

This is history in the happening. It is not the Nation-creating history of 1787 when that band of dedicated men drafted our Constitution, or the 2 years that followed during which the State ratifying conventions met to debate, ratify and adopt that work, or 1789 when the First Congress convened and adopted the Bill of Rights as the first 10 amendments to the Constitution to be submitted to the States for ratification. These three courses of events created this Country. What is before you is whether that country shall persevere. I have no fear but that each of you will discharge that obligation.

I am not a politician. I do recognize, however, that there are political considerations involved in the process, and I mean political with a big P not a little P. Big P politics is the science of government, political science. Government is something created by the people themselves, and only the people, to assure to the extent practicable their living together in a free and open but ordered and stable society with accommodation to all others who seek the same ends, liberty and life and the pursuit of happiness. That is what a constitution is. But as Abraham Lincoln said, as all of you remember, that as soon as you create a government, you must turn at once to working and slaving and being vigilant to preserve and protect that government and that Constitution so they do not become subverted and destroyed or seriously eroded, and thus result in impairment of that for which the government was created in the first instance. You are engaged in that task as representatives of the people.

I turn now to evidentiary principles and rules. This committee last year considered the Proposed Federal Rules of Evidence submitted to it by the subcommittee of this committee chaired by the distinguished gentleman from Missouri, Mr. Hungate. I suggest that in your consideration and weighing of the evidence before you, you give attention to certain provisions of the Rules of Evidence contained in your bill which is now pending before the Senate Committee on the Judiciary.

In section 102 of that bill, it says: "these rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." It is that truth finding process in which you are now engaged. You are functioning as triers of the facts in this matter. Your rule 102 is a sound principle by which to be guided. It is the rule that the Hungate committee approved and you in committee and on the House floor voted for.

There is another sound rule of evidence, which you included in your Federal Rules of Evidence bill, by which you would well be guided. It is rule 401, entitled, "Definition of Relevant Evidence." This rule is your judgment—and a very sound judgment it is:

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

That test of relevancy goes to admissibility. You are the judge of the weight to be given to the evidence once admitted. You are experienced lawyers. You know the distinction between admission of evi-



dence on the one hand and, once admitted, the weight to be given to that evidence on the other. You give consideration not only to its weight, but how it fits into the warp and woof of the entire body of the evidence with relation to the ultimate issue or issues that you are going to have to determine.

Now, one more pertinent Rule of Evidence you adopted to which I wish to call your attention. It has a direct bearing upon an issue of fact which you must resolve. Little did you know when you adopted those Federal Rules of Evidence that one or more of them would come into play in this awesome endeavor of yours. The rule is No. 401, entitled: "Habit and Routine Practice". It reads:

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or the routine practice.

Now, as Mr. Doar said to you, it is very difficult for any man or woman to put himself or herself in the shoes of another. Especially is this so as respects a President of the United States. But, in part, there must be an effort on your part to do that. You will instinctively do this in order to gain a feel of the President's perspective. Understandably, this will be difficult. But you are all professionals who have been trained throughout your professional lives to do your level best to take an objective viewpoint. That is a primary reason for the existence of the Bar, the people expect and demand that detachment. Lawyers are truly the privileged few of this Nation. The people of the Nation rely on members of the Bar, lawyers, to represent them personally but more importantly to preserve and protect their Constitution, their government, their liberties, their society, from erosion, from abuse, all according to the oath lawyers take to preserve, protect and defend the Constitution of the United States and thus to protect, defend and preserve the liberties of the people.

May I make one personal reference? I have been here now since January 7. I have been through all of these evidentiary materials, I have read those edited transcripts, I have listened to the tapes. And ladies and gentlemen, I have never heard the President of the United States or any of his aides ever say, as Mr. St. Clair is wont to say, by any manner or words, written or oral. "This is my country." "This is the Constitution of the United States." "These are my constitutional duties and responsibilities." "It is my duty to preserve, protect and defend the Constitution, to see that the laws are faithfully executed." "The people of the Nation will be affected one way or the other by what I do or fail to do with respect to that which I have been or should have been alerted." I haven't heard or seen any of that. There isn't a word. There isn't a phrase, there isn't an inference to be drawn from which that may be found in the record.

I turn now to another subject. We are talking not about Mr. Nixon per se. We are talking about the Office of the President of the United States. This in an office that all lawyers of the Nation represent in a very real sense. The people of this Nation revere the Office of the Presidency of the United States. We are sworn to preserve, protect and defend that office. The individuals who have been elected to the Office of the Presidency become to the people of this country almost deities. The people expect, and rightfully so, that the individual occupying the Office will at all times have in mind the oath of office,

to preserve, protect and defend the Constitution, to take care that the laws are faithfully executed and that the Office of President will also be faithfully executed, all to the end that their liberties, properties, freedom, their free and open society, and all other things the people hold dear will be preserved, protected and assured by whomever occupies the Office of the Presidency of the United States.

As I say, you take the same oath, not only as lawyers, but as Members of Congress when you are inducted into that high office as does the President when he is inducted into his.

And I have been thinking of something else. Constantly, throughout these proceedings, I have said to myself, yes, the President of the United States is elected in a general election throughout the country by some 220 million people. Did they know then what we all know now? There is also the Congress of the United States whose Members are elected by the same 220 million people concentrated, however, in voting districts. Because of that those who elect you are closer to you than they are to the President.

We learn as children in grammar school that the House of Representatives is one of the three co-ordinate and equal, and I emphasize the word "equal," branches of government that is so precious to all the people. We know that the Members of the House are the immediate and closest representatives of the people. You as those representatives are learning of unknown serious matters.

Those wise men, the drafters of our Constitution, realized what Abraham Lincoln said later, and perhaps others before him—Montesquieu, perhaps—that once you create government, you must take care, you must be diligent, to see that the government does not become a monster and destroy that for which the people whom you represent created their government in the first place.

The House of Representatives was granted the awesome power and responsibility of Impeachment to protect the people's government against misuse; evasion; and even destruction; it is the sword and shield against executive tyranny. The power was granted to keep the Presidency strong and healthy. The purpose of Impeachment, in the eyes of the framers and of the people who ratified the Constitution, was not to punish a bad leader, but rather to protect the Nation, the Constitution, the people. Regardless of what your ultimate decision, majority decision, may be either in this committee, or on the floor of the House, impeach or not impeach, the exercise of that constitutional function fairly and responsibly as you have been doing will strengthen, not weaken, the Office of the Presidency of the United States and the executive department. Preservation and protection of the Constitution and the Nation will have been accomplished, all in the interests of the people, and just as the framers and the people intended. In a very real sense you are today the guardians of the Republic. The Nation must be protected from a failure to charge the President when there are serious grounds to accuse him. On the other hand, both the Nation and the President must be protected from groundless accusations.

I wish to join with Mr. Doar—I join with him in all the remarks he has made, his analysis of the evidence, his recommendations, but I wish to emphasize the aspect of conspiracy and concealment and containment. And, in this regard may I make a personal reference? When I was senior counsel to the Warren Commission, back just 10 years



ago this year, my first major assignment was to investigate whether there was a conspiracy of persons operating with Mr. Oswald to bring about the assassination of John Fitzgerald Kennedy, then the President of the United States of America. My team of fine young lawyers worked with me through a virtual mountain of evidence. We had all the resources of this Nation working with us. I did not see, nor did my team, nor did the other senior counsel, among them Joe Ball—known to the Californians as a great trial lawyer and investigator—any evidence indicating the existence of a planned pattern involving others, and no secrecy or cover-up typical of conspiracy. And the conclusion was, if you have read the conspiracy chapter of the Warren Commission Report, as I am sure you have, that there was no conspiracy. It starts out by emphasizing the fact that Oswald's course of conduct was attended by accident, disorganization, spontaneous, erratic, bizarre, and irrational decisions. There was an absence of co-conspirators. There was no organized, consistent plan; there was no flow, there did not seem to be any co-conspirators, that is, second or third persons, around except Marina, who was experiencing personal difficulty with her husband all the time and resisting what he was doing. He was an erratic loner. The footprints of a conspiracy were absent. In the case of a conspiracy, you lawyers, and I know many of you have been able trial lawyers in civil and criminal cases and conspiracy cases, you know that central to a case of conspiracy is secrecy, concealment, planning and consistent policy and objective.

The facts and circumstances here have a cast quite different from those present with respect to Oswald. You must resort to the drawing of inferences from the evidence. You don't find the conspirator with his hand in the cookie jar when you open the door suddenly, but you can see the pieces of the cookie, the crumbs, perhaps, off in the corner of the room when you suddenly open the door.

Now, in the light of all that, and with your permission again, Mr. Chairman, I emphasize that this is history. You are not recreating the Constitution; you are preserving it; you are strengthening it, and irrefutable—and that is the way I wish to conclude these comments—irrespective of what your ultimate decision may be, as lawyers and Members of Congress of objectivity, experience, responsibility and dedication, you will have made the Constitution work as its framers and those who ratified it intended and the people expect. In doing so you will have honored and adhered to the constitutional tenets of the highest privilege in the people's gift and furthermore, you will have restored honor to and confidence in the legal profession, and maintained the honor of the Congress.

Thank you, Mr. Chairman. Thank you, ladies and gentlemen.

[NOTE.—The material referred to above may be found in a previously published publication entitled "Summary of Information" released by the House Judiciary Committee in July 1974.]

The CHAIRMAN. Thank you, Mr. Jenner. Mr. Doar.

Mr. DOAR. Mr. Chairman, the first section of the Watergate matter deals with organization of the White House in its relationship to CRP. I only want to call the committee's attention to two matters in that for now before going on to the facts respecting the development of the so-called electronic surveillance book. On page 4, there is an exchange between Congressman Thornton and Mr. Mitchell. Page 4, there, where Congressman Thornton and Mr. Mitchell talked about



Mr. Haldeman's relationship to the President. I would hope that you would mark that and reread that section with respect to how it corroborates the general outline of Mr. Butterfield's testimony. Please keep that in mind as I think it is important for you to understand how the White House worked. In the same respect, Mr. Jenner calls my attention that you should keep in mind Mr. Kalmbach's testimony with respect to the operation of the White House.

Second, I think you should keep in mind that in April 1972, President Nixon and his chief political adviser, John Mitchell, believed that they were going to be in for a hard election. This was in April. If you remember the transcript that the White House furnished to you, for the April 4 tape in response to the ITT subpoena, it is largely a discussion of political plans and problems.

I believe there that you will find on page 7 that Mr. Mitchell and the President discussed the Wisconsin primary, prospects of various Democratic Presidential hopefuls, and the problems and possibilities for the President's reelection campaign in Wisconsin, California, Illinois, Ohio, Pennsylvania, New York, New Jersey, Texas, Ohio, Michigan, Minnesota, Massachusetts, and Vermont.

What I am saying to you is that I think the evidence is clear that as of April 4, 1972, there was no indication and no idea in the minds of either President Nixon or John Mitchell that President Nixon would have the easy, overwhelming time that in fact he did have in November.

Turning now to the discussion of the approval of the political intelligence plan including the use of electronic surveillance, I would like Mr. Evan Davis to summarize the proof on that subject.

Mr. Davis. I will just quickly go over the key pieces of the circumstantial evidence that Mr. Doar referred to earlier. The first piece of such evidence is, of course, the relationship between Mr. Haldeman and the President set out in the first section. Distributed to you today was this complete collection of the political matters memoranda. These are the memoranda that Gordan Strachan prepared for Mr. Haldeman which Mr. Haldeman reviewed, according to Mr. Butterfield's testimony, discussed with the President, wrote instructions on the memos, and returned to Mr. Strachan to be implemented.

These memos have to be studied and looked at in their entirety to see, first of all, the extent of Mr. Haldeman's control over the activities of the Committee for the Re-Election of the President; the kind of detailed knowledge and his detailed role in campaign decisionmaking. The memos here cover all of the issues involved in running a campaign and, as you can see, Mr. Haldeman's writing and instructions right on these memos to Mr. Strachan, his participation in the decision of all those issues involved in running a campaign.

Turning now to the political intelligence aspect of that activity, these memos, a number of these memos trace the development of the political intelligence proposals and Mr. Haldeman's role therein. The first one we mention is the memo on August 10, in which Mr. Strachan reports—excuse me, August 13—where Mr. Strachan reports that he has complied with Mr. Haldeman's instructions to have a meeting on political intelligence. The citations, unfortunately, were prepared prior to the printing of the book, so it doesn't conform at this point. But if you will look at the index in front, you can find the August 13

memo, and it is page 2 of that memo, so presumably, it is page 2 of this book.

Yes. If you look at page 2, you will find the particular memo I am talking about. Under item 6, the second paragraph, "Pursuant to your request on Tuesday, Buchanan, Chapin, Walker, and I met on Wednesday and developed our oral recommendations for political intelligence and covert activities."

Mr. BUTLER. Excuse me, I would just like to get this one straightened out. I am on page 2.

Mr. DAVIS. That is right, and if you see item 6 just above the middle of the page, it is labeled "Buchanan." Then if you look at the second paragraph of item 6—

Mr. BUTLER. Thank you very much.

Mr. DAVIS. OK. This is the first indication we have of the origin of the desire for the covert activities political intelligence program. We discuss the reasonableness of the inference that Haldeman was implementing the President's desires with respect to initiating discussion of covert political activities and asking that oral recommendations be prepared.

Mr. LATTI. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTI. May I inquire, at this point, what is the plan about procedure? Are we supposed to sit here and not ask questions, or are we permitted to ask questions?

The CHAIRMAN. I would think if the presentation is made, if there is any point of clarification, I think that at this time, the purpose of it is really to get the members to be able to inquire. But I think in order for it to be orderly, maybe he should go through that section at least.

Mr. DAVIS. I will try to move through it quickly.

After this Operation Sandwedge was developed—this is covered extensively—

The CHAIRMAN. Excuse me, Mr. Davis, how long will it take?

Mr. DAVIS. About 5 minutes.

This was covered in detail in the political matters memoranda. Haldeman was informed that Operation Sandwedge was being considered. You have seen, there was submitted to you the memoranda concerning Operation Sandwedge. It included black bag and electronic surveillance capability. In November, Haldeman met with Mitchell to discuss Operation Sandwedge. We have included in the book the talking paper for that meeting. It asked if Dean is playing an active enough role in the development of Operation Sandwedge. It asked who should we develop—who should we assign to increase the surveillance of EMK from periodic to constant?

It notes that Operation Sandwedge has received an initial \$50,000 and is it doing enough to accomplish our objective? It notes that Haldeman—Strachan writes for Haldeman there the comment that, "I need \$800 to \$300,000 for surveillance."

All of those comment are contained in that memo.

On December 2, Haldeman was informed that Strachan—excuse me, that Liddy was going to go over to CRP to work on political intelligence and also to work with Dean on political enemies project. Following this, the meetings took place which we presented to you earlier, first in Mitchell's office at the Department of Justice and then

at Key Biscayne, in which a specific intelligence program was approved.

Mr. DENNIS. Mr. Chairman, a matter of clarification.

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Am I correct that Operation Sandwedge was an operation which was never implemented?

Mr. DAVIS. The political matters memoranda of December 2 states that instead of putting into effect Operation Sandwedge, Liddy will handle political intelligence at CRP.

Mr. DENNIS. So you are talking about a discussion of something which actually never took place as far as Operation Sandwedge is concerned. That is the way I recall it.

Mr. DAVIS. Well, the conversations that Mr. Haldeman has with the President in April discussing Operation Sandwedge indicate that it was not put into effect because they didn't like the people associated with it. That was Mr. Caulfield, you will remember.

Mr. DENNIS. Well. I just raised the question. We have got plenty before us without going too much into things that were never implemented.

Mr. FISH. Mr. Chairman, could I ask with reference to that December 2 memorandum?

Mr. DAVIS. In that conversation I just referred to, Mr. Haldeman told the President that Operation Sandwedge was the grandfather of the Liddy plan, that he had discussed it with Mitchell and that the Liddy plan was put forward because they weren't satisfied with the people associated with Operation Sandwedge.

Mr. FISH. Where will I find that memorandum?

Mr. DAVIS. The memorandum for the meeting—page 201.

Turning to page 4. On March 31, Mitchell met with LaRue and Magruder at Key Biscayne. They discussed the intelligence proposal. Magruder testified that Mitchell approved it. This testimony is corroborated by Reiser's testimony that Magruder told him shortly thereafter to tell Liddy his plans were approved; by Strachan's testimony that Magruder reported the approval of a sophisticated intelligence-gathering system.

Strachan has testified that he included this information in a memorandum he prepared for Mr. Haldeman and which he sent to Mr. Haldeman and which after the 17th of June, Mr. Haldeman instructed him to destroy.

Strachan has also testified that following the approval of the Liddy plan on March 31, Mr. Haldeman called him up and told him to instruct Mr. Liddy to change his capabilities from the candidacy of Senator Muskie to the candidacy of Senator McGovern.

In addition, there is testimony that following the discussion of the Liddy plans in Mr. Mitchell's office at the Department of Justice, Mr. Dean went to Mr. Haldeman, told him what was being discussed over there, said that Mr. Dean was opposed to it, and Mr. Haldeman said that the White House should have nothing to do with this. He did not turn the proposal off.

The final point with regard to the implementation of the plan regards the financing. The testimony which has been presented to you shows that when Liddy came to Sloan, treasurer of CRP, to ask for \$250,000, the right to draw \$250,000 in cash, Sloan pursued Liddy's



authorization to make this withdrawal and it was confirmed by Mitchell to Mr. Stans. That Magruder did have authority to authorize Liddy to withdraw or to draw these substantial amounts of cash.

MR. DOAR. The one other matter of circumstantial evidence with respect to the authorization is the conduct of the President following learning of the plan and the fact that no one connected with the plan was discharged for their participation or the fact that it had been carried out.

Turning now to——

MR. McCLORY. Mr. Chairman?

THE CHAIRMAN. Mr. McClory.

MR. McCLORY. Mr. Chairman, I just want a question on the matter of procedure. I was just conferring there with Mr. Garrison. I expected that our briefing session here would present pro and con a discussion of the various points. I understand that Mr. Garrison's paper, his report, will not be ready until Sunday. However, I would think it would be fair if at the end of each section—and I just conferred privately with Mr. Garrison—if at the end of each section, if there is some comment he would like to make with reference to this, he might make such a comment.

There is no objection to that?

THE CHAIRMAN. I don't believe so. I think that this is the only way to proceed, but I think that we ought to get at least with section, at least, by section.

MR. McCLORY. We are at the end of one section. That is why I raised it at this time. I don't know whether he has any comment or not.

MR. DOAR. We are not at the break-in point.

MR. GARRISON. Mr. Chairman, in light of Mr. McClory's suggestion——

THE CHAIRMAN. Of course, you will recall, Mr. Garrison, that we won't have before you as we do have in this the references that you will be making to any argument that may be a contra-argument which you may readily refer to. So I would hope that you would enlighten us as to that.

MR. SANDMAN. May I ask a question, Mr. Chairman, on procedure?

It is my understanding that Mr. Garrison's part of this thing was only approved about 2 days ago, but without him being in this thing as it is now, is there anything in any of these books that shows the other side of the story, the explanation of why various——

THE CHAIRMAN. There is only one side, Mr. Sandman, the facts. This is what are being presented.

MR. SANDMAN. Well, there are facts that can show the other side or shed some light on why something was done.

THE CHAIRMAN. Those are facts, too.

MR. SANDMAN. Well, I am thinking—I did not get a chance, for example, to look in the section on Internal Revenue, but I am sure—is the memo in this book which the IRS put together, for example, and said that there is no finding of active wrongdoing on the part of the President so that he could be held for fraud? Is that memo in here?

MR. DOAR. I am sure it is. Yes, it is.

MR. SANDMAN. That is the type of information I am looking for. Are we getting the benefit of both sides of the story?

Mr. DOAR. Yes, you are getting the benefit of all the facts that we think are pertinent to the particular matter. We are not just writing just all of the facts, all of the facts we presented to you in the books. This is not the same kind of a summary of the information as was the statement of information. But, for example, if we say that there is a plan go-ahead and Mr. Mitchell denied that he approved the plan, the statement is there that Mr. Mitchell denied it.

Mr. SANDMAN. Now, one last question. Is there anything in this book that is not in the books that we have had?

Mr. DOAR. No, sir.

Mr. SANDMAN. So this is only a summary of what we already have.

Mr. DOAR. Oh, the testimony of the witnesses—John Ehrlichman's notes, some of the political matters memoranda, and those things.

Mr. McCLORY. Mr. Chairman, I wonder if we might recess for 1 hour or so? I think it would be helpful to our side to get together. My suggestion doesn't seem to have general support on this side and there may be a more logical, more expeditious procedure.

Mr. RANGEL. Would the gentleman yield before we consider this recess?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. There were two items that came up yesterday and I would like to have some clarification from counsel, if we do in fact recess, whether they will be made available to the committee. One is the transcript which the President's counsel attempted to offer to us yesterday. Do we have the transcript?

The CHAIRMAN. Yes, that was —

Mr. RANGEL. The members, I am talking about.

Mr. DOAR. No, we don't have that.

Mr. RANGEL. I am asking whether the members can have the transcripts; and, two, the so-called Ehrlichman notes, which I understand were made a part of the record.

Mr. DOAR. The chairman asks that I draft for him a letter in reply to Mr. St. Clair and attach that letter to the transcripts when they were circulated to the members, and that letter is over at the building and we will distribute that right after lunch when the chairman signs the letter.

Some of the members did ask for the transcripts, and I gave them out with the chairman's permission, right then and there. But I thought that getting them out to everybody, we would attach the letter and the chairman's replies and the transcripts.

The CHAIRMAN. Yes.

Mr. DOAR. The second thing is we are preparing this summary. We have now four or five copies of the complete thing. We are preparing a summary of that and then some samples for all of the members to have.

Mr. HOGAN. Mr. Chairman?

Mr. RANGEL. I thank the gentleman for yielding.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. I have two questions. One, when will we get Mr. St. Clair's presentation, the book, so-called book he had said would be ready today? When will we get it? Mr. Chairman?

The CHAIRMAN. I'm sorry.

Mr. HOGAN. When will we get Mr. St. Clair's book? That is my first question.

The CHAIRMAN. Is that the advocate's brief he was talking about?

Mr. HOGAN. Yes.

The CHAIRMAN. He was going to make it available.

Mr. HOGAN. We have not received it yet?

The CHAIRMAN. No, we have not. I think he said it would be available sometime tonight.

Mr. HOGAN. My second question is Mr. McClory had stated Mr. Garrison would not have completed his stuff until Sunday. What does that do to our schedule? As I understand it, we will not meet again until Wednesday. Will we have to wait until Wednesday for Mr. Garrison's presentation?

The CHAIRMAN. No, I would certainly hope that we would dispose of that when Mr. Garrison is ready.

Mr. HOGAN. On Sunday?

The CHAIRMAN. Well, not Sunday, but on Monday.

Mr. HOGAN. So now we can anticipate that we will meet Monday on —

The CHAIRMAN. I would have hoped that it would have been before then, but in the light of the fact that Mr. Garrison is not ready and doesn't have it—very frankly, that was the reason why I directed that question to Mr. Garrison. I think he would be under a terrible handicap to make reference to something that he doesn't have ready.

Mr. HOGAN. Well, we will now meet Monday, is that so?

Mr. McCLORY. Will the gentleman yield?

Mr. HOGAN. Yes.

Mr. McCLORY. I did confer with the chairman and with members on this side, and I think it is preferable, if this is acceptable to the chairman—I think it is acceptable on our side—that we defer any presentation at the end of each session by Mr. Garrison at this time and let Mr. Garrison make a presentation on Monday after he has completed his report. I think that is agreeable on our side.

The CHAIRMAN. I am sure that the members are interested in hearing both sides.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. In view of the fact that you indicated we will have a meeting on Monday, would you tell us what the schedule is for tomorrow?

The CHAIRMAN. We are going to meet tomorrow, because this presentation is going to be for the benefit of the members. I think that this presentation is vital in that reference is made here to a distillation of facts that I think are very pertinent which call attention without attempting within a period of 1 hour to say what all the facts are that are supportive of any proposed articles.

Mr. RAILSBACK. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, in connection with the point about the distillation of facts, I don't know about the other members, but I find it absolutely dizzying to just listen to a very rapid presentation of a lot of facts such as Mr. Davis gave. I understood that we were



going to have the theory of what these add up to presented and not just a lot of isolated facts. I wonder if it is possible for staff in presenting these, to tell us the significance they think—not just give us a whole lot of dates and occurrences.

Mr. DOAR. Well, the significance of the facts——

The CHAIRMAN. That will happen during the course of ——

Mr. DOAR. Yes, we will do that.

Mr. SEIBERLING. I think that is really what we need. We can read this stuff here, but we need to be told what to look for and what does this mean?

Mr. DOAR. May I just say the significance——

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Let Mr. Doar answer that question first.

Mr. RAILSBACK. Yes.

Mr. DOAR. The significance of the facts with respect to the events prior to the break-in on the 17th of June is that President Nixon authorized a broad plan of illegal electronics surveillance and the proof of that is from circumstantial evidence of how his key aides and associates set this up.

Mr. SEIBERLING. I understand that is the ultimate significance, but I do think it would be helpful if it could be described a little bit more with a little less just regurgitating of isolated facts.

The CHAIRMAN. Mr. Seiberling, the plan is that following this, there will be for the further benefit of the members what may be called a summary of all—not just of facts but what would be based on these facts. There will be this other further memorandum or summary, which I think will be useful and helpful to the members.

Now, I thought that this was a briefing which would focus on the most important elements, the facts, that really pertain. All we have had up until now is a lot of detailed information which was relevant to the inquiry. Now, you know, we have got to do some of this back and forth, I think, in discussing it and in asking questions of the counsel, and then I think, following that, that summary.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I wonder if—I think some of us feel that right at this particular point in time, we need some time. I am wondering, for instance—I don't think I can be here tomorrow. If I go through this myself carefully, with the references to these memos, am I going to really get the same thing if I go through it real carefully?

Mr. DOAR. Yes.

Mr. RAILSBACK. I don't know why we don't do that, then.

Mr. RANGEL. Mr. Chairman?

Mr. RAILSBACK. I yield to the gentleman.

Mr. RANGEL. I would like to agree. I agreed with the procedure by this committee and no matter what procedure we ultimately decided upon, there would have been some handicaps. One of the handicaps I think we have had is as the information has been presented to us, we as lawyers and Congress people were reading with you. Never have we had the opportunity to individually read the information——

Mr. RAILSBACK. Right.

Mr. RANGEL. And then perhaps listen. I am just saying that now

that we are reaching this conclusion, there may be some things that strike different members in a different way, so I would like to join in with my colleague, Mr. Chairman. If we could just have an opportunity to digest and to read on our own—most of us were trying to do it in the early morning and late evening.

Mr. RAILSBACK. Mr. Chairman, if I could just pursue that. There are some areas that I know that I am particularly interested in, too. I am going to read everything. I will read everything. But there are some areas that I am very much concerned about and I want to go over them particularly carefully. I think it is kind of a waste of time if we methodically go through everything and not really—

The CHAIRMAN. Well, I agree with that. I don't think it is the plan to read every word here, as we have done in the detailed information. I think the plan was to try to make reference, highlight, to show what supports the various theories that will be presented, and then, as a result, to be able to inquire of the counsel whether or not, on the basis of other information that is in your possession, whether or not it fits in with the theory that you have in mind.

Mr. RAILSBACK. Mr. Chairman, if it is all here, like they said—and they are both nodding their heads—if it is all here, I will just tell you, and I can tell a lot of members feel the same way, I just think we would be much better off if we do it on our own and then, if we have questions, be permitted to ask them at a later time.

Mr. McCLORY. Would the gentleman yield?

Mr. Chairman, I would respectfully disagree. I think if you distribute this with the assumption that everybody is going to read it, I think it is a lot of wishful thinking, because it just doesn't happen.

Mr. RAILSBACK. Then you are talking about a kindergarten class.

Mr. McCLORY. No, you are talking about adults and you are talking about adults because adults require briefings, they require speeches, they require oral explanations in addition to oral reading. When it comes to legislation, we orally read the bill, we orally read amendments. I think this is an extremely important part. If you want to read this stuff in addition, this is OK, but to assume that everybody is going to read everything and not have it presented here orally to us, I think it would be very unfortunate.

Mr. GARRISON. Mr. Chairman, may I say something?

The CHAIRMAN. Mr. Garrison has asked to say something.

Mr. GARRISON. Mr. Chairman, ladies and gentlemen of the committee, I just want to offer one comment in explanation for the manner in which the minority memorandum is being prepared. It was, frankly, predicated upon the concept that Mr. Railsback and Mr. Rangel expressed, that having had an opportunity to read and think about the facts and theories that appear from the facts in the majority memorandum, perhaps at that time, it would be useful then to read and ponder what is said in the other memorandum, and that at this stage of the inquiry, the role as trier of fact for purposes of deciding whether to impeach or not devolved not upon the staff of the committee but upon the committee members, and that we can best assist you by giving you a written explanation of the facts and the arguments thereon.

Mr. HUNGATE. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I would ask Mr. McClory to consider this. If we could just have perhaps this afternoon to read what has been presented to us again in a summary, and perhaps to get together and go back over our books, or to do anything, and then when we come back tomorrow, for those who didn't read, they didn't read it, but for most of us who are very anxious to digest it, it would give us time to do it.

Now, if the Chair intends to let us off at a reasonable time this evening, then my question is moot. Perhaps I should ask the Chair, what procedure do you intend to establish as far as this evening is concerned?

Mr. McCLORY. If the gentleman would yield, I would not disagree with that. As a matter of fact, I thought we should have had these for a long period of time to prepare us so we would be prepared for this experience here, but we have not had them until this morning, and I think this process is essential.

Now, I didn't have any objection to our having an afternoon or evening to read them and perhaps come back and go through this process. It might accelerate it this way.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman, for yielding. I believe I am not speaking only for myself when I say that the most precious commodity in my life right now is time. There is an enormous amount of work to be done by all of us and very, very little time in which to do it. Briefings are helpful, but admittedly, they encroach upon that limited amount of time. So long as the staff has indicated that it has collated the evidentiary materials which it believes bear upon particular issues, that is helpful to me. But it is not helpful to me in view of the time demands to which we are all subjected to have that spoon-fed over a 24-hour period. I can use my time more efficiently and more productively, and I hope, Mr. Chairman, that after this fair opportunity for the staff to make a general summary of the evidence as they see it and handing to us a booklet, that we are released, Mr. Chairman, to go to work on this and not to sit here hour after hour after hour when there is so much to be done.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. I would like to suggest that there is a process which is not inconsistent with perhaps both approaches to this thing. It seems to me there would be some benefit to be gained, striking out the hour after hour after hour concept, for Mr. Doar and Mr. Jenner to have a chance to, in effect, run through this thing in a fairly brief period of time after lunch. I appreciate the need to take it away and to go over it, but I do think that we ought not to at this point—not having brushed through it, so to speak—walk away from it and I think we ought to have an opportunity to do that in a fairly limited period of time this afternoon, and then walk out and take it and then come back on tomorrow with the opportunity, then, to start asking questions and pressing and probing to see what is hard and what is soft and to try to get it—

Mr. RAILSBACK. Would you yield?

Mr. SARBANES. Yes, surely.



MR. RAILSBACK. I wonder if we wouldn't be better—I don't object to doing what you are suggesting, but I wonder whether we wouldn't be better off to have the weekend to go through it carefully ourselves. In other words, instead of coming back tomorrow, I think I would like a couple of days to study the stuff.

MR. SARBANES. I think we have got to come back and——

MR. SEIBERLING. Will the gentleman yield?

MR. SARBANES. I have the time. I want to respond.

I think we need the time to come back and start this sort of exchange. I think that overnight—I mean this is not more material than one can work through overnight and be prepared to respond to. I don't think we ought to sit here until 8 or 9 o'clock tonight going through a process; I agree with that. But I do think we ought to have a chance to hear a kind of touching of what is here and what the high points are and then take it away and read it and think about it, and then come back and start this process of probing and exchanging and questioning.

In the end, we are all going to have to, you know, be able to respond to the points that are made.

MR. RAILSBACK. If you will yield, I just really believe at this point—we are going to start debate pretty quick. It just seems to me that we would be well advised—we have worked hard, now. We have been working hard. We have had briefings. It seems to me we would be well advised to really familiarize ourselves with this material which they say is everything they are going to present anyway. I just think if it takes—what is the matter with a couple of days instead of trying to force everything?

MR. SEIBERLING. Will the gentleman yield to me, Mr. Sarbanes?

MR. SARBANES. I yield back.

MR. SEIBERLING. If I may be recognized on this, Mr. Chairman.

The CHAIRMAN. Mr. Seiberling.

MR. SEIBERLING. All of us experienced in law school, I assume, have had the experience that we got a lot more out of a lecture if we read the cases first. I just think that I am getting absolutely nothing out of Mr. Davis' rapid flashing of facts in front of my eyes—absolutely nothing. My mind, and maybe other people don't have this problem, but my mind can't take them in and relate them that fast. It is like having a bunch of pictures flash faster than I can take them in.

I think if we can read this stuff and then listen to his outline of the facts, we would get far, far more out of the presentation. That is all I am saying. I agree with the gentleman from Illinois.

MR. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

MR. BUTLER. I would just like to associate myself with the remarks and the line of reasoning that it is more important to read this before we come here and discuss it. I was searching through my notes on last evening and I find many references and many inquiries of Mr. Doar as to when we were going to get the information we have today. I have pleaded with him to get it to us on time.

I am not particularly critical, but on July 9, I noticed a particular reference in which he promised it to us within the week. This sort of thing has been going on for a long time and I have continuously protested that my mind is even slower than Mr. Seiberling's. I have got to

have this, I have got to go through it before I can think. And this whole process bothers me from the point of view that I may be rushed into a decision—as I have on many subpoenas. Unfortunately, I think it was just sloppy. Luckily, it came out all right; I think it was the right decision.

But this is the big question, now. I would like, Mr. Chairman, for an opportunity to consider this thing maturely and carefully over the weekend, so that if there are things that really trouble me, I can come back and ask counsel about them. So I would like to associate myself with the people who think that maybe the more appropriate time would be to come back on Monday.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I am in general sympathy with the views. I have maturely and carefully cancelled four appointments and rearranged with a U.S. Senator to be here tomorrow. I will be greatly chagrined, after having relied on the schedule and the fact that we are needing to use our time, if now I can go back and announce to everybody that I have lost my mind and I didn't need to do that.

I think there needs to be some stability in the scheduling. I would hope we might work out some middle ground whereby we either leave early this afternoon and study this in preparation for tomorrow, or perhaps meet all afternoon. But as has been indicated by counsel for all parties, there are politics involved in this and the lives of all of us, and it is rather a matter of chagrin when you tell people one thing and it doesn't come out that way.

Ms. HOLTZMAN. Mr. Chairman?

Mr. HUNGATE. I yield to the gentlewoman from New York.

The CHAIRMAN. I recognize Mr. Mann.

Mr. MANN. Mr. Chairman, I join with Mr. Hungate in stating that I was utterly delighted when I found we were going to meet tomorrow because I have been agonizing over what Mr. Butler has said, that we are going to be rushed into a decision without the opportunity for proper reflection and discussion.

Now, Mr. Railsback has just finished saying that we are confronted with debate. We are confronted with debate before the television camera that is going to be nonproductive as far as our reaching a decision is concerned. Now, for that reason, time is so precious to us or we need to reconsider the deadlines that are confronting us in order to have the discussion, the exchange of ideas, the devil's advocacy, the probing that we need.

Now, let's not kid ourselves. There are some people here who still need some input. Now, I can agree that this process perhaps can be shortened and that we can in a couple of hours, or an hour, after lunch take the dose and take it home with us. But as I saw in the last few days, our being confronted with a Monday or a Tuesday television debate, which I say again—who are we going to be persuading in that debate? If there are any facts to be decided, any personal decisions to be made, they are going to be made as a result of private reflection on the exchange of ideas with my colleagues on this committee. And I would like to have that opportunity. Therefore, I cherished the possibility that we were going to meet tomorrow and I had hoped that we were going to meet Monday, though it hadn't been announced, and

Tuesday, and I was going to use every device to see that that came about.

Mr. DENNIS. Will the gentleman yield?

Mr. MANN. I will yield.

Mr. DENNIS. Would it not be better studying this and then doing what you suggest on Monday and Tuesday?

The CHAIRMAN. Why can't I offer a suggestion as a compromise? Why can't we, in the light of the fact that some members feel that we should have this time for discussion and some presentation, why don't we adjourn this afternoon and meet tomorrow morning and have an opportunity to go over these matters that have been presented to us, and there may be other matters, as well, tomorrow that I think are important insofar as procedures go that I think we can also discuss.

I think that—frankly, let me say this, that, you know, the staff would welcome this opportunity to have some time to be able to put together some of the things that are being asked for, I must say to Mr. Butler and I must say to all of those who, while they say that they are not being overly critical of the staff, I have got to state that as one who has followed this staff—and this is no defense or apology but a statement of fact—as one who has followed this staff, that there has been preoccupation every moment until 2 and 3 o'clock in the morning with the presentation and a compilation of materials that would be helpful. So I would hope that members would refrain, even as kindly as they try to be, from trying to impress upon the staff that they have been somehow delinquent. It has just been physically impossible.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. I am offering that as a compromise, that we do adjourn and meet tomorrow morning.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I would say I think that is an excellent compromise. It probably will meet the needs of the members best. I would like to spend this afternoon working. I have refrained from getting into that. I think that tomorrow morning, it would be helpful if we could think of a schedule, in accordance with your suggestion, that we come in at 9 o'clock, maybe hear whatever Mr. Doar's staff might want to present, and then ask questions; if we have any procedural matters to discuss informally, we could discuss them and anticipate concluding, say, at 1 o'clock without a break. If we will work from 9 to 1 o'clock, we can get a lot done, and those members that want to work on this over the weekend can proceed toward that effort starting at 1 o'clock, without just sitting here and acting like we are working when some members will have to be gone. Why put them to the embarrassment?

I am going to be here. I can work Sunday. Some of them are committed to go home Saturday night. So let's just face that. I think it is a fine suggestion.

Mr. McCLORY. Mr. Chairman, I would want to indicate my concurrence in your suggestion, go over until tomorrow at whatever hour you set, 9 or 10 o'clock.

I would suggest to the members on my side, those that are available meet in my office at 2 o'clock in order that we might have a discussion of the procedures for next week. I think that is extremely important.



Mr. DOAR. Mr. Chairman?

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I want to be sure that all the members understand this. That is that in our presentation, we have not yet touched on the theories of abuse of power, the matter with respect to noncompliance with the committee's subpoenas, matters with respect to the personal finances of the President. The matter with respect to personal finances of the President and noncompliance with the subpoenas is in the book, but the abuse of power section we will deliver to each of your offices to insert in the book if we don't come back after lunch, almost immediately. We will take personal responsibility to see that each of you get it, individually. But I wouldn't want any member to go off and think that because we only spoke about Watergate here, we hadn't an overall summary on those other areas.

I hope that is clear to everyone.

The CHAIRMAN. The Chair would like to state that when we do break from here, since this is just an informal briefing and not a meeting, an official meeting, that the Chair is going to, on Monday, set a time, too, for consideration of the release of some of the materials that have not been considered as materials that were released for publication when we adopted the resolution for releasing and publication of materials. Those matters still have to come before us. The Chair intends to set a meeting for that time.

I would also like to state that outside, I have just been advised that there are a couple of thousand—I don't know—well, in the halls or someplace, there are those who are demonstrating on the question of impeachment, I guess the committee in fairness to the presidency. I would just like you to be aware of it.

Mr. DENNIS. Mr. Chairman, when are we meeting now?

Mr. RANGEL. Mr. Chairman?

Mr. OWENS. Mr. Chairman, point of clarification.

The CHAIRMAN. Mr. Owens.

Mr. OWENS. At what point will the committee meet to set down the procedures for the formal debate next week? Will that be—

The CHAIRMAN. We are going to discuss those tomorrow again and then set the time on Monday—9:30 tomorrow morning.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Before we adjourn, not too long ago, this committee agreed to allow the senior members to have counsel attend certain parts of the presentation. Now that we are reaching this conclusion, I suppose some of the more junior members would like to have the assistance of one of their staff members to work with us. We are going to have to carry this on the floor. We won't have, you know—I was wondering at what point could we have one member of our staff come in?

The CHAIRMAN. I have already indicated that that is the case and all that there was in the various assignments, all that had to be done, that had to be cleared with Mr. Zeifman.

Mr. RANGEL. I mean for our briefings? I am talking about our briefing sessions.

The CHAIRMAN. I think if there is no objection, there ought to be permitted the opportunity for some member of the personal staff to come in. I don't see any reason why not.

Mr. RANGEL. Thank you.

The CHAIRMAN. Mr. Danielson, you had a question.

Mr. DANIELSON. Mr. Doar has answered most of it.

My answer, then, is that we will receive this afternoon in our offices the portions not yet distributed. Is that correct?

Mr. DOAR. That is correct.

Mr. DANIELSON. The other part is I know we have gone through a great deal of discussion. My understanding is that we will meet again tomorrow morning at 9 o'clock?

The CHAIRMAN. At 9:30, and let me state that in light of the fact that we don't need a quorum, the Chair is going to start at 9:30.

[Whereupon, at 12:55 p.m., the committee was recessed, to reconvene at 9:30 a.m., Saturday, July 20, 1974.]





# IMPEACHMENT INQUIRY

## Executive Session

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SATURDAY, JULY 20, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to recess, at 9:30 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Railsback, Dennis, Fish, Hogan, Butler, Cohen, Froehlich, and Moorhead.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, special counsel to the minority; Albert E. Jenner, Jr., senior associate special counsel; Richard Cates, senior associate special counsel; Bernard W. Nussbaum, senior associate special counsel; Evan A. Davis, counsel; Richard H. Gill, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; William P. Dixon, counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel; and Malcolm J. Howard, assistant special counsel.

The CHAIRMAN. The record will show that I banged the gavel at 9:30 and commenced the meeting at 9:30.

Mr. HUTCHINSON. A quorum not being present——

The CHAIRMAN. A quorum not being present, we recess the meeting.  
[Recess.]

The CHAIRMAN. The Chair would like to announce that we commenced at 9:30 this morning with myself and Mr. Hutchinson and Mr. Froehlich present.

Just for the record, the meeting did start at 9:30 and we recessed at 30 seconds after 9:30.

This morning, we have——

Mr. SEIBERLING. May it appear in the record, Mr. Chairman, that the front bench is all present.

The CHAIRMAN. Mr. Doar. I understood that we would have a presentation by you and Mr. Jenner which will take, I think, all told, about 1 hour. Is that so?

Mr. DOAR. That is right, Mr. Chairman.

The CHAIRMAN. With some breaks in between so that there would be some references to some specific details.

Mr. DOAR. Well, it might be, Mr. Chairman, more preferable to go through just from beginning to end for a short period and then have the discussion with members of the staff and go into more detail where the committee is interested in having explanations in some detail.

The CHAIRMAN. All right, then.

I would like to announce that it is the Chair's intention to break at about 12:30 until 1:30, and we intend to go until about 4 o'clock this afternoon.

Mr. Doar, let us proceed so we can make the most of this time.

Mr. DOAR. Mr. Chairman, it seems to me that we can be most helpful to the members this morning if, for maybe 20 or 30 minutes, I briefly ran through some of the matters in Watergate that I think the committee ought to give their consideration to and then, following that, Mr. Jenner speak for perhaps 30 minutes on the section on abuse of power, and Mr. Nussbaum maybe 5 minutes on the subpenas and 5 minutes on the income tax. Then thereafter, the members could ask us, any of us, to explain some detail.

Now, obviously, in going through this in 20 minutes, just to give you one example, I am not going to be able to explain to you and summarize for you some of the complicated intricacies of the evidence with respect to the coverup. The one example I would use would be the Mexican money.

I would say to you, however, that after the discussion, if the Mexican money and the Dahlberg money is not clear to you, that we are prepared, either Mr. Cates or Mr. Davis or myself, to make a full explanation and trace that Mexican transaction for you, and take such time as you wish.

I am sure that there are many other examples like that that you would like to have elaboration on and we are prepared to do that.

Now, briefly, starting with the 17th of June and keeping, just as an example, to the first proposed article in section 1 of the book of draft articles, selecting that not because it has any particular merit or lack of merit but solely because it is there, with respect to the coverup, it states that the President immediately after the burglary made it his policy to cover up and conceal responsibility for the burglary and the identity of other participants and the existence and scope of related covert activities.

What we are saying there is that the President made a decision to cover up.

The second point in this article is that the means of implementing that decision include perjury, the payment of hush money, obstruction of justice, destruction of evidence, improper and unlawful interference with the conduct of an investigation, improper and unlawful misuse of other agencies, including the CIA, the release of false and misleading statements. We say in this article that the President is personally and directly responsible for all this.

That is, then, what you, it seems to us, have to look at and examine, examine the evidence to see whether or not there is clear and convincing evidence that the President made the decision and that these means were used continuously thereafter to carry out his decision.

Now, in thinking about that, I have learned, and principally I have learned this from Dick Cates, and will expand on it, will expand on it considerably later on, that you might take what we might call three R's, three R's and one D. The three R's would be the risks, the reporting, and the response and the D is the Presidential decision.

If you look at the situation after Watergate—and there is one thing that you have to keep in mind, what the people, what the principals at the White House knew about the Watergate and what the investigators knew. They knew, the people at the White House knew more than the investigators did, but they were responding not to what the investigators knew, but to the risks, to what the investigators might know.

With respect to solving the crime of the Watergate break-in, the case against McCord was made on the 17th of June. The case against Hunt was not made until after the 5th of July, when Mr. Baldwin—I believe it was—Mr. Baldwin came forward and identified Mr. Hunt as being part of the Watergate burglary.

The case against CRP and the fact that the money was CRP money was not really made until some time after the 5th of July, and the case against Mr. Liddy was not made until some time after the 5th of July. That is the chronology of the police solution to this burglary.

On the other hand, with respect to the risks as the men in the White House appraised them, it was clear from the 17th of June that not only Mr. McCord was involved, he was an employee of the committee, but it was clear on the 17th of June that Mr. Hunt was involved, that he was an employee of the committee.

So from the standpoint and the viewpoint of the White House and the men in the White House, Mr. Hunt was guilty of that crime of burglary, or had committed that crime of burglary. They knew that on the 17th of June, whereas the police did not know it until the 5th of July.

With respect to the money, the men in the White House knew that there was money that was traceable to CRP on the 20th of June, whereas the police did not figure this out, the FBI did not figure this out until some time in July.

Now, when you look at the reports, the reporting of that information, those risks with respect to McCord, it went to Mitchell in Los Angeles, and the first thing Mitchell did was issue a false statement about McCord's employment. When it was learned that Hunt was an employee and was involved, Mr. Colson, on the 18th, advised the President in a telephone call and said that they were holding meetings to decide what to do.

Both Mr. Ehrlichman and Mr. Haldeman were advised about Hunt almost immediately.

Now, what decisions did the President make during that period? On the 18th, the President placed Mr. Ehrlichman in charge. On the 19th, at a time when Mitchell, Magruder, Mardian, LaRue, Haldeman, and Ehrlichman and Dean all knew that the DNC breakin was a Liddy operation. No decision was made to fire him.

On the 20th all of these key officials met, the President was not present at this meeting although he was in his office alone for that hour and 20 minutes while all of these facts were discussed.

On the 20th, the President met with Haldeman and made decisions with respect to the response to the DNC breakin.



On the 21st, he made a decision that Ehrlichman and Dean would have specific assignments to follow through, and on the 23d, he decided that Haldeman and Ehrlichman would meet with the CIA because of the risk—we believe the evidence shows—that there would be an exposure of the Mexican money and they wanted to seal off the tracing of the Mexican money back to CRP.

Then on the 28th, Mr. Haldeman and Mr. Ehrlichman picked Mr. Kalmbach to pass money on to the defendants.

The responses that were made during that period were on the 17th. Mr. Mitchell made a false statement in Los Angeles and there was also a decision made in the beginning, and the implementation of the decision, to throttle down the FBI investigation, to narrow the investigation, to see if the CIA could interfere with the investigation. And there were decisions made by Mr. Haldeman and the people at Creep to destroy records.

On the 20th, Mr. Mitchell issued another false statement with respect to the implications or the responsibility of CRP. On the 22d, the President issued a statement ratifying Mr. Ziegler's and Mr. Mitchell's false statements.

On the 23d, Mr. Stans met with Mr. Dahlberg about the \$25,000 check that had been traced to this burglary. And let me say that at that time, the FBI was not being able to locate Mr. Dahlberg, but at the same time Mr. Dahlberg was being brought to Washington by Mr. Stans for conversations about that money.

I will only say this parenthetically—the money getting into the hands of the burglars was pure happenstance.

Mr. Liddy, in addition to his job running the intelligence operation over at CRP, also was the general counsel, and general counsel to the Finance Committee. So checks had come in and they came in just on or about or immediately after the April 7 reporting date.

The committee wanted to convert that money to cash so that they could get green bills in their hands rather than checks, and they gave the money to Mr. Liddy to cash and bring back the money. And just coincidentally, he took the money down to the Miami bank and had Barker, who was one of the persons involved in the DNC break-in, cash this money for him. So he brought back \$89,000 in cash and \$25,000 in cash and it went into Sloan's till—I suppose in a box along with a lot of other cash.

Then when Liddy came along and wanted money for his intelligence operation to buy equipment, Sloan took out money and he happened to take out the same bills. He takes out the same bills and gives it to Liddy during April and May, and that is just the happenstance that permitted the Bureau and the investigators, once they started on to trace it back, to find that that money rested initially in the cash box of the CRP.

Mr. DENNIS. Mr. Doar, where do we find all that in our material?

Mr. DOAR. It is in the section entitled "Initial response," Mr. Dennis.

Mr. DENNIS. You mean in this book here?

Mr. DOAR. Yes. I know that is complicated and——

Mr. RAILSBACK. The President's response?

Mr. DOAR. The President's response, yes.

I know that is complicated and I would say that after we finish this, if you would permit Mr. Cates and Mr. Davis to just elaborate on that and go through it again, I think it would be useful for the com-

mittee, because I think it is somewhat difficult to follow and I am sure my explanation is probably not as clear as it might be.

Mr. DENNIS. I thought your explanation was all right and I understood it, but I hadn't heard it before in any detail and I know we have not gotten anything from Mr. Liddy and I was just wondering where we pieced it together.

Mr. DOAR. Well, it is in here and then it is also in the tabs and you can piece it together from phone records and from Mr. Sloan's testimony and from reports of the FBI when they started to get wind of the money.

As soon as they got wind of the money problem, then they told Dean and that was on the night of the 22d, and Dean reported it to Mr. Haldeman on either the night of the 22d or the morning of the 23d. Then the President called and had Mr. Helms and Mr. Walters come over.

One significant thing about that meeting was that even before the meeting was over between Mr. Helms and Mr. Walters and the President, John Dean had made a phone call to Pat Gray during the meeting and said, "Mr. Walters will be over to see you." So that the plan to have Walters go over to the FBI to talk to Gray was initiated, was conceived even before the meeting that the President had with Mr. Helms and Walters, because otherwise, how could John Dean, who was not in the meeting, make a phone call to Mr. Gray to say that Mr. Walters would be over.

Excuse me, not that the President had with Helms and Walters, but that Mr. Haldeman had with Helms and Walters.

Now, you will remember on the 28th of June with respect to the narrowing of the FBI investigation when the CIA began to be a little reluctant about telling the FBI not to interview people involved in the Ogarrio or Dahlberg checks, Dean placed a call to Mr. Gray and had that investigation still held up.

Now, bear in mind, on the 28th of June, the case was not solved. It was only solved against McCord and the people that were found within the DNC. It was not solved at that time against Hunt and Liddy.

Then on the 28th, Ehrlichman and Dean passed part of the contents of the safe, of Hunt's safe, to Mr. Gray, except and apart from what they gave to the FBI. Now, all of you know, I am sure, that when the FBI receives any documents in the course of an investigation—and this was a special one—the special agents in charge of special investigations such as this really are awfully competent investigators and if they have a free hand they can move. This crime was not that complicated that it would have been possible for the Bureau to have really moved through this, in my judgment, rather quickly.

When they get documents from a witness or when they pick up documents which give them leads, as we all know as lawyers, they make very careful inventories of those documents. And, of course, when they made the inventory of Hunt's safe, they only made the inventory of part of Hunt's safe because Mr. Dean and Mr. Ehrlichman did not deliver all the papers, which would have caused the Bureau or given the Bureau additional leads to solve this particular crime.

Now, turning next to the decision, as I say, this all led up to the June 30 conference with Mr. Mitchell or Mr. Haldeman and the President, and Mr. Mitchell talked about this, and it seems, in our judgment,

that there is evidence there that the President has knowledge of what is going on. Implicit in the conversation is a direction that the cover-up should proceed.

Again, bear in mind that the President does not know, nor does he appreciate the extent of what has to be done to cover up, because again, Hunt is not identified at that time; Liddy is not identified at that time. The problem at that time was—and the money was not solved at that time. The problem at that time was McCord. The decision was made to contain that coverup until the election, and this was carried out.

Next, we come to the means. The means of containing it was to assign to Dean and Kalmbach responsibilities for particular things to do.

Dean was to throttle, to narrow, to limit, to hamper, to restrict the FBI investigation. Kalmbach was to pay money to the defendants to hire attorneys so that the attorneys could put up a good defense and for support, all for the purpose of, it seems to us it is clear from the evidence, to keep them from talking to the authorities.

Mr. DENNIS. Mr. Doar, just one question.

Are you suggesting that the President was present at a meeting where it was discussed that Kalmbach should raise money for this purpose?

Mr. DOAR. No; I am not. It was Mr. Haldeman and Mr. Ehrlichman on the 28th.

Mr. DENNIS. All right.

Mr. FISH. Could you go a little slower, Mr. Doar?

Mr. DOAR. Surely.

Then we have the next thing with respect to the President. It was on the 6th of July when his FBI Director called him and told him, blurted out to him, to the President, that there were people in the White House who were trying to mortally wound him.

The President, after a moment's pause, said, "Just continue to make the same kind of a thorough investigation that you are already making." Well, he had not been making a thorough investigation up to that time, because the CIA and the White House had been restricting him, asking him not to proceed with this and that.

The President asked for no facts, asked for no details, did not follow up, following that call, with Mr. Gray to see just who it was and what was and how it was that people close to him were throttling the investigation.

Then on the 6th or 7th of July, the President and John Ehrlichman have a discussion about clemency. Now, this again is relevant evidence on the question of Presidential knowledge. Why else would the President discuss clemency unless he had knowledge at that time that Hunt and Liddy, who were White House people, were involved in this? According to Ehrlichman the President made it clear that there could not be any discussions of clemency within the White House.

Then we move to the 29th of August, when the President made a public statement that John Dean had made a careful investigation. Well, the fact of the matter is that John Dean had not made any investigation at all.

Then we turn to the conversation on the 15th of September, where the President discusses with John Dean thoroughly all of the prob-



lems, this can of worms, that this break-in had caused. And there was this detailed discussion of what should be done with respect to the Patman hearings.

Then I want to call your attention to pages 15 and 16 of the transcript, the top of 16 of the transcript of the conversation on the 15th of September, where the President says, "I think maybe that's the thing to do; this is, this is big, big play. I am getting into this thing. So that he—he's got to know it comes from the top."

Then a little later down the line, Mr. Haldeman says, "Yeah."

Then the President says, "That's what he's got to know."

And Dean says, "Right."

And then he said, "I can't talk to him myself \* \* \* but we can——"

And then Dean says, "Well, if we let that slide up there, it would just be a tragedy to let Patman have a field day."

And the President says, "What is the first move?"

Mr. RAILSBACK. Where are you now?

Mr. DOAR. That is on the top of page 18 of the transcript, again showing Presidential direction of the coverup, direct evidence as set forth in this Presidential conversation.

Now, the third means of coverup were the payments after the election.

After the election occurred, as you can see from the conversation between Mr. Hunt and Mr. Colson, the price of silence went up. The President had won an overwhelming election and Hunt was beginning to put increased pressure for additional money for silence.

You can't read the conversation between Hunt and Colson of November 15 and reach any other conclusion.

Prior to the election, Hunt had already gotten \$200,000 and money was getting short and Dean took this tape and went up and played it for Haldeman and Ehrlichman.

Haldeman and Ehrlichman cannot remember that that occurred. He then went to New York and played it for Mitchell. Mitchell acknowledges that it was played for him.

Then you have the use of, the development, or the release by Mr. Haldeman of the \$350,000 White House fund to supplement the money that was being paid to the defendants. And you trace through that——

Mr. COHEN. Mr. Doar, could I interrupt you?

I think you said prior to the election, Hunt got \$200,000?

Mr. DOAR. That is about right, yes.

Mr. COHEN. All that money did not go to Hunt himself, did it?

Mr. DOAR. No, no, I meant for Hunt and the other defendants. I did not mean to suggest that.

Mr. McCABILL. Who was the conversation between on the 15th?

Mr. DOAR. The conversation on November 15 was between Colson and Mr. Hunt, on November 15.

I suggest to the members of the committee that that is a conversation that the committee may wish to read in full, as well as a later memo that Mr. Shapiro wrote following a conversation with Hunt on the 16th of March, stating that Hunt was making demands and threats to secure money if he and his associates were going to continue to remain silent.

Then we come to March 21. There there are two problems. I think it is helpful if you accept the problems in analyzing what was dis-

cussed at that meeting. There is the short-term problem of Hunt—buying time for Hunt now to give the President and the other people an opportunity to figure out what to do. Then there is the long-term problem of continued payments to Hunt, the million dollar business, which the President figured would not work, it is not practical, because the fellows will still be in jail and there was no way that the President could provide clemency.

But you have got to distinguish between the immediate problem, the short-term payment so that the President and his men can decide how to handle this with the minimum of risk, minimum amount of loss, and the long-term problem of continuing payment to these people while they remain in jail.

Then you come to page 119 that I want to direct your attention to, if I may, of the transcript. This is in the middle of the page, where we are talking about these payments, and the President says—this is the middle of the page, page 119, talking to Dean—you don't have the transcript? "As far as what has happened up to this time, our cover there is just going to be the Cuban Committee did this for them up through the election."

Dean says, "Well, yeah, we can put that together. That isn't, of course, quite the way it happened, but, uh,"—

Then the President says, "I know, but it is the way it's going to have to happen."

Dean says, "That isn't, of course, quite the way it happened."

And the President says, "I know, but it is the way it is going to have to happen."

And Dean responds, "It's going to have to happen," and laughs.

Now, the next means that was used was clemency, and the question of clemency for the defendants. The question of clemency is really, up to April, a very, very obscure matter. I mean if people talk about clemency, they are not going to talk frequently openly or forthrightly; they are going to talk elliptically. All of us are lawyers. We understand that. They are going to talk in ways that convey the message without using the word. But one puzzle that I think probably many of you are bothered about, and I am bothered about it, too, is the Hermes notebooks. I just want to say something about the Hermes notebooks and the clemency. That is that you remember that Dean did not turn over to the FBI the Hermes notebooks that belonged to Hunt.

Dean's testimony was that he did not realize that they had not been turned over, that they were in the bottom of his safe in a brown folder, and that he did not realize that they were there until some time in January, when he found them and looked at them and shredded them.

You remember that Bittman had made a motion to suppress. Bittman—you saw Bittman here. He is a tough, aggressive litigator. He manned the ramparts for the coverup all through the summer and fall of 1972. He was vigorously filing motions this way and that way in the civil cases, he was defending Hunt, and he filed this very serious motion to suppress evidence—

Mr. COHEN. Would you clarify that statement, "manned the ramparts for the coverup?"

Mr. DOAR. Yes; I will. I mean the most effective way to have the coverup continue during the summer of 1972 was if the lawyers were

really tough, contentious litigators all through the summer and delayed the development of the criminal cases and the civil cases that were pending against the CRP. Bittman also testified here that he was used—they were his own words, “I was used.” And he was used. He worked up to 2,500 hours during that time in defending Hunt and working with the CRP to defend those cases against disclosure in pretrial discovery and at the same time by aggressive discovery motions before trial.

Mr. COHEN. Isn't that just as consistent with being hard, tough, aggressive representation of your client to delay, file motions, in any criminal case?

Mr. DOAR. I am not saying that it is not. I am not arguing that. I am not suggesting what was Bittman's purpose. I am not talking about Bittman's purpose. My purpose is not to try Bittman here. I am saying that the purpose of those that planned the coverup were to use Bittman.

Mr. COHEN. I understand it, but the impression you gave to me was that Bittman was part of this—

Mr. DOAR. No; I don't mean that. I don't suggest that. I don't mean to suggest that one way or the other.

But anyway, Bittman files this motion to suppress the evidence and it is pending in the middle of December. From the standpoint of the prosecutors, this is a really difficult problem for them with respect to Hunt. So the prosecutors get Dean in that office on the 22d of December and they get Kehrli in there and they get Howard in there, and they say, well, what about these Hermes notebooks? And nobody knows anything about them.

Finally, Dean steps out of the room with Petersen, and says to Petersen, I might lie for the President, but I won't lie for Ehrlichman and I want to tell you that part of this material went to the Director of the FBI and part went to the agency. And Petersen says, well, you are going to have to tell the truth if you get on the stand about that.

Then Petersen goes off for—it is the last day before the Christmas vacation and he takes a week off and on the 5th of—3d, 4th, and 5th of January—

Mr. FLOWERS. Could I ask a question for clarification?

Mr. DOAR, when, if you know, did Mr. Bittman file the motion to suppress?

Mr. DOAR. I think it was sometime in October.

Mr. FLOWERS. Sometime in October.

That in and of itself would indicate that he was not in concert in this thing, because that is one of the difficult problems they had to contend with, wasn't it?

Mr. DOAR. I am not suggesting Mr. Bittman was in concert.

Mr. HUNGATE. Mr. Chairman.

On that same point, I thought when Mr. Cohen raised the question, there seems to be conflicting evidence. In the newspapers it is reported that Mr. Bittman is an unindicted coconspirator, although he said here he did not know he was. If he is, that would throw him in a different light on manning the ramparts, I think.

Mr. DOAR. My point is he would be on the ramparts whether he knew it or not—whether he was or was not an unindicted coconspirator.

He said he was used. I am not suggesting that—I don't know the



facts. I don't know whether it is true or it is not that he is an unindicted coconspirator.

I don't mean to suggest that. But I am just saying, look at what Mr. Bittman did.

Anyway, we have the motion to suppress, we have the——

MR. HOGAN. Mr. Chairman, maybe counsel would like to amend the statement he made, which was highly defamatory and not supported by the record that "Bittman manned the ramparts for the coverup."

I don't think that is supported by the record and it is very defamatory of Mr. Bittman.

MR. DOAR. I had hoped I had explained that, Mr. Hogan. I did not—I didn't intend it to be highly defamatory of Mr. Bittman.

On the other hand, I am not here advocating, representing or defending Mr. Bittman, either. I am just not passing judgment on Mr. Bittman.

MR. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

MR. RAILSBACK. At the time that John Dean mentioned that certain things had been turned over to Mr. Gray and also to the agents, he did not mention, I take it, that he had some things himself?

MR. DOAR. No; he did not.

His testimony is he did not realize he had some things himself.

MR. RAILSBACK. He said he wasn't going to lie to the—he said he wasn't going to lie——

The CHAIRMAN. For Ehrlichman.

MR. RAILSBACK. Yes, for Ehrlichman. He was interested in the President, he wasn't going to lie for Ehrlichman. But here is another instance where he didn't mention that he had certain things in his possession, which I guess he claimed that he didn't——

MR. DOAR. Realize.

MR. RAILSBACK. Yes, but——

The CHAIRMAN. Mr. Cohen.

MR. COHEN. Perhaps we could place some of this in perspective, because I have been bothered by the phrase you used, manned the ramparts, and I think the word "unwittingly" perhaps is proper. But it could be said that perhaps the members of the Patman committee were also manning the ramparts in that sense of the word and that those people who voted not to have the investigation were also used in that sense as part of the coverup, and that is the only way you are referring to Bittman, in that context that their actions in protecting the civil rights of defendants, if that was the argument that they accepted, Bittman, in pursuing the defense of his client, was unwittingly used in that connection?

MR. DOAR. I think that is true. I will amend my statement, Mr. Hogan, so that there is no misunderstanding about it. I regret that it was made and caused a misunderstanding.

But anyway just to go over the facts again the motion to suppress is filed in October. The meeting about the Hermes notebooks is the 22d of December.

We have those three meetings between Ehrlichman, Dean, and Colson, and Colson and Hunt, and then a discussion with Colson and the President around the 3d, 4th, and 5th of January.

On the 8th of January, Hunt withdraws his motion to suppress. Then on the 11th, Hunt pleads guilty.

That is the chronology and at that time, sometime in there, Dean destroys the notebooks.

Now, I don't really say to you that I think that that is clear and convincing evidence of, standing alone, of anything very much. But it at least gives you the beginning of some idea of just what the chronology of that particular matter was.

And later, in April, the President does express his concern about the fact that he does not want Hunt to think that there has been any withdrawal of any kind of understandings that have therefore been made to him.

But then, when we get into April——

MR. DENNIS. Mr. Doar, you have absolutely no evidence as to what was in those notebooks, is that correct? I mean I asked Dean when he was here, of course, and he absolutely said that he did not even read them.

MR. DOAR. He said there were names and addresses——

MR. DENNIS. He said names and addresses, that was all; names and addresses and they looked kind of old. He flipped through them, did not really read it, and threw them away. That is what he testified to.

Now, does anybody know any more than that at all?

MR. DOAR. Not that I know of.

MR. DENNIS. I asked him even if he remembered any names and addresses and he said no——

MR. DOAR. He said he did not.

MR. DENNIS. Now, Hunt may well be lying, but if you take his word one place, I suppose maybe you ought to take it another, I do not know. But anyway, there is nothing to show what was in those books.

MR. DOAR. That is correct.

MR. DRINAN. Mr. Chairman, a point of clarification.

Mr. Doar, you were going to say something about January 3, 4, and 5, and then a motion came. Could you clarify that? What happened between December 22 and January 8, when Hunt withdrew his motion?

MR. DOAR. Well, there were these discussions between Mr. Colson, Mr. Ehrlichman, and Mr. Dean about Hunt. There was a discussion between Mr. Colson and Mr. Bittman about Hunt, and I believe there was a conversation between Mr. Colson and the President about Hunt.

MR. DRINAN. What day was that?

MR. DOAR. That Colson and President conversation, I believe, was on the 5th of January. I think we subpoenaed those recordings, but they were not produced.

MR. DRINAN. Thank you.

MR. DOAR. But then in April, and I just summarized this briefly because I want to hurry through this. In April, and I think that the members will want to look at the statements that the President made to Mr. Ehrlichman and Mr. Haldeman about contacts or promises to Mr. Magruder, Mr. Mitchell, and Mr. Dean.

MR. WALDIE. Mr. Doar, before you go into that aspect, would you resolve to the extent it can be resolved that item of evidence that was introduced on the last day of our hearings by Mr. St. Clair relative to the March 22 position of the President on the payments?

I do not fully understand; No. 1, what he sought to provide by the introduction of that evidence. I presume he thought it was exculpatory. But No. 2, I would like some explanation of the latest revelation in the paper, the conflict of the dates——

The CHAIRMAN. If the gentleman would defer, I think that we are in no position to comment upon that now, since that is a matter that the committee will have to examine. It has just come to our attention and the committee staff has been inquiring into it.

Mr. SEIBERLING. Mr. Chairman, all of us have questions as Mr. Doar goes along, but we lose the thread when we keep interrupting. We almost lost the significant point about the discussion between Colson and the President on clemency if Mr. Drinan had not brought it up. I think we lose something if we keep interrupting.

Mr. WALDIE. I am sorry for interrupting.

Mr. DOAR. I do want to call one thing to the committee's attention here.

On page 10 of our brief, under the clemency section, they are discussing this meeting, Father Drinan, in early January, during the discussions with Mr. Colson and Mr. Ehrlichman. If you follow that down to the first place where Dean speaks and then the President speaks, then Dean speaks, then the President speaks. Then—this is on page 10 of the section on clemency. Then the President says: "Ehrlichman and who?" And Dean says "Ehrlichman and Colson, and I set up there and Colson presented his story to Ehrlichman."

Then the President said "I know."

Now, that "I know" was omitted from the White House transcripts which were furnished to the Special Prosecutor prior to the time that they were furnished to us.

Then I would like to call your attention to the previous page 9 of the same section on clemency and ask you to mark the last reply of the President there, it is on the evening of the 14th of April.

The President has telephoned John Ehrlichman and they are discussing how Ehrlichman might divert Dean from implicating Halde-man and Ehrlichman, and Ehrlichman said, "I am going to see John Dean next." The President asked what he was going to say to him.

He said, "I am going to try to get him around a bit, it is going to be a delicate——" then they continue to discuss this and the President says "John, that is not going to help you"—this is on page 9:

Look, he has to look down the road to one point, that there is only one man who can restore him to the ability to practice law in case things go wrong. He has got to have that in the back of his mind. He has got to know that will happen. You don't tell him but you know and I know with him and Mitchell, there isn't going to be any damn question, because they got a bad rap.

Finally, then, on the section on deception and concealment, there the three significant things, I think, to consider: the three reports—the August 29 report of John Dean, which in fact was not a report, there was no report at all. And if you look at page 88 of the transcripts, you will see that the President—Dean tells the President—this is on page 88, and Dean says to the President on March 21, "I was under pretty clear instructions"—then he laughs—"not to really investigate this, that this was something that just could have been disastrous on the election if it had—all hell had broken loose, and I worked on a theory of containment." And the President said, "Sure."



Then in the March report, there is one exchange about the Dean report in March and a discussion of what kind of report was made, and there is one statement there, the President said to him, "You make a complete report but make it very incomplete."

Then the third report—

Mr. FISH. Are you on page 7?

Mr. DOAR. Pardon?

Mr. FISH. What page are you on?

Mr. DOAR. That is on page 7 of the section on deception and concealment in the summary of information. They are talking about the Dean report in the Dean report in March, at the very bottom of the page, and there is this long statement about it, the President says, "But if you say no, we are willing to cooperate, and you have made a complete statement, but make it very incomplete."

Then we come to the Ehrlichman report on April. That is the third report. The reference is, time and time again in the April transcripts about that being a scenario for Haldeman and Ehrlichman to get their stories together. It was not a situation based, I think, on all the evidence, that Ehrlichman was making an investigation, but rather, he was—if you look at what Ehrlichman was doing, what he did, you will see that he was just developing and setting up this scenario.

I think that at the back end of that section on the Ehrlichman report, which starts at page 10 and runs on through page 18, you get a summary of the things that Mr. Ehrlichman did. He had that interview with Paul O'Brien—this is on page 18—with Kalmbach, with Strachan, with Dean, with Colson, and if you review just what was said and done following each of those meetings, you will see that in fact Mr. Ehrlichman—you will be able to be in a position to make a judgment of just exactly what was the purpose of Mr. Ehrlichman's report.

Then finally, in this section, we discuss false and misleading statements. We divide those into two time periods, those before the election and those after the election. In those after the election, you will see time and time again in the material of the book where the President is issuing instructions to Haldeman and Ehrlichman as to the kind of statements that Mr. Magruder, Mr. Strachan, Mr. Haldeman, Mr. Ehrlichman, and Mr. Colson should make in connection with their responses to the investigation.

Finally, we come to the last section—

Mr. FISH. Where is this?

Mr. HOGAN. Where are you?

Mr. DOAR. They are all in the section, page 19 and the pages that follow.

Mr. OWENS. Page 19, concealment?

Mr. DOAR. Yes, and the following pages.

As Mr. Cates would point out, at that time the President was faced with four threats to the exposure of the coverup. He was faced with the threat from Howard Hunt, he was faced with the threat because of the McCord letter that was released on the 23d of March, he was faced with the threat of further disclosures by some of his men, principally Magruder and Dean, and he was faced in the middle of April with Howard Hunt again changing his mind and making additional disclosures.

Mr. HOGAN. What date is this point in time?

Mr. DOAR. This was following March 21, running through the middle of April.

Mr. RAILSBACK. Mr. Doar, what you are saying to us is that the Ehrlichman report, based on the interviews that you cite, shows that it was not really meant to be any kind of a report at all, but more or less strategy sessions in which Mr. Ehrlichman, in some cases anyway, discussed what strategy should take place.

Is that what you are suggesting? And should we check——

Mr. DOAR. What I am suggesting is that the committee members should look at that testimony, look at those facts, and that that is a decision the committee members have to make.

Mr. RAILSBACK. Each individual interview where we have notes or memoranda where Mr. Ehrlichman discussed with each one of these individuals and then used that as a basis to show that he had conducted an investigation?

Mr. DOAR. I would do three things—I think you have to look at each interview that Mr. Ehrlichman conducted—what reports he made to the President, what reports he made to the Department of Justice with respect to that information, and what steps he took in response to the reports to the President with respect to the information he gave to the President.

Mr. RAILSBACK. Would you say that again slower?

Mr. DOAR. First, when interviews he conducted and what notes he took; second, what reports he made to the President with respect to the things he learned in the investigation; third, what information was passed to the duly authorized law enforcement agencies of the Federal Government—that is, the Department of Justice and the FBI, either by the President or by Mr. Ehrlichman at the direction of the President; and fourth, what other responses or steps did the President and Mr. Ehrlichman take based on the information that Mr. Ehrlichman secured.

I say when you look at all those four things—you have to decide whether or not this was a good-faith investigation to get at the truth and to determine who was responsible for or who was involved in this coverup or whether or not this was a scenario to continue to conceal and deceive, protect those who were responsible for the coverup.

Mr. DENNIS. Mr. Doar?

Mr. DOAR. Yes.

Mr. DENNIS. With reference to the fourth reference, it seems to me whatever Magruder and Dean knew is on the record now. McCord, as far as I have been able to tell from the record, couldn't tie anything to the President. He doesn't seem to have done so, despite complete good will and intent, if he could do it. That leaves Hunt.

Now, I am not all clear that Hunt could tie anything to the President either. He was fairly down the line. But we haven't heard from Hunt. I suggest again he would be an awfully good man to hear from in this investigation if there's any possibility of doing it.

Mr. DOAR. Well, Hunt, of course, we would have been able to, to tell about the seamy things he had done for John Ehrlichman.

Mr. DENNIS. For Ehrlichman.

Mr. DOAR. And as he told Mr. Shapiro, you know, that he couldn't involve other people, and it seems clear from the transcripts that the

President was determined that there be no criminal liability on any of his key men. I mean, he said that several times. The President said: "We don't want, I am not going to have any criminal liability. We can't afford that. We can't even afford indictments against them, and we are not going to have that."

Mr. DENNIS. I realize that.

Mr. DOAR. And that was the thread. I don't suggest that Mr. Hunt was going to say that the President authorized and advanced the break-in or the President had any knowledge of the fact that actually they were going to go into the Democratic National Committee on those two nights that they went in. I think, Mr. Dennis, and I am just not sure of this, so I want to be careful, but there is, in these Ehrlichman notes I believe with his conversations with the President in early July 1971, some notation of the fact that Mr. Ehrlichman and the President discussed Howard Hunt and some book he was writing or something like that, so there is some additional evidence that the President was acquainted with Mr. Hunt.

But beyond that, I don't suggest—

Mr. DENNIS. Well, if there's anything there in those notes that is significant, I would be very happy to have it called to our attention.

Mr. DOAR. Well, Mr. Jenner and I looked at those notes last night in getting them ready for you, and what we are trying to do, and will try to do over the weekend, is try to get them in a way that's useful for the members to analyze. And as I say, there's 350 pages of this material, and until we get it so you can look at it, I think if we don't get it for you until Monday, it will just save you time.

Mr. RANGEL. Will Mr. Dennis yield?

Mr. DENNIS. One more question, and I don't want to take up the time, but Hunt's the man who has always said there are commitments to him. Has anyone got any idea who he claims made those commitments?

Did you ever try to interview him, for instance?

Mr. DOAR. Yes; we tried to interview him but we were not successful in getting information from him.

Mr. RANGEL. Mr. Dennis, would you yield for a moment?

Mr. DENNIS. One moment, Mr. Rangle, and I will be very happy to. Did he indicate he would take the fifth if he were called?

Mr. DOAR. No; he wanted immunity.

Mr. DENNIS. Well, that's what he told you or his lawyer told you?

Mr. DOAR. That's what his lawyer told us.

Mr. RANGEL. Mr. Dennis, will you yield?

Mr. DENNIS. We didn't take that up any further here in the committee, however?

Mr. DOAR. No; we did not.

Mr. DENNIS. And we know nothing about what he meant by who gave him commitments, in spite of the fact that he repeatedly said that, apparently, is that right?

Mr. DOAR. We don't know who was the specific person who made the commitments. We do know, we do know who he knew in the White House, who he dealt with in the White House.

Mr. DENNIS. Well, that's Ehrlichman, I assume. That's all we know?

The CHAIRMAN. And his sponsor was Colson.



Mr. DENNIS. Of course, we had Colson here and he doesn't claim he gave him any commitments at all.

Well, if I have any time I will be glad to yield to my friend, Mr. Rangel.

Mr. RANGEL. Mr. Dennis, I just wanted to direct your attention to page 11 after the indictment of the five people there, and the President and the conversation——

Mr. DENNIS. This is in which section, now?

Mr. RANGEL. In the blue book.

Mr. DENNIS. Yes; I know.

Mr. RANGEL. There is a conversation of September 15 of which excerpts are here in the section dealing with containment where the President refers to Liddy and Hunt as White House aides.

Mr. HUTCHINSON. Mr. Doar, did you say that you were going to deliver over to the committee on Monday Ehrlichman's notes?

Mr. DOAR. With an analysis or an explanation, yes.

Mr. HUTCHINSON. Will you let Mr. Garrison go over them before you do so that he will be familiar with it?

Mr. DOAR. Oh, yes. I think they have been available to him already. There is no question about that.

Mr. HUTCHINSON. All right. Thank you.

Mr. DOAR. Now, just briefly with respect to the President's contacts with the Department of Justice, I think that the record is clear that the purpose of bringing——

The CHAIRMAN. Mr. Doar, I would just like to remind you, I know that you have been interrupted many times by many questions and, of course, the members, I am sure, are anxious, but it is already an hour and you stated that you would take 35 or 40 minutes.

Mr. DOAR. I know I did, and I have about 2 minutes left to go, so that with respect to the President's contacts with the Department of Justice, I think the record is clear that the President wanted John Mitchell to come down to Washington to discuss a new strategy. I mentioned yesterday that after all of these disclosures on the 21st, I mentioned what I thought the significance of all that was, the significance of the call to the Attorney General on the 22d, and the significance of the call to the FBI Director on the 23d.

I have mentioned the significance of the 10-day period between April 15 and 25 when Mr. Petersen dealt with the President about this investigation, and the fact that on the 25th, Mr. Haldeman was listening to the tapes of recorded conversation all through the month of March and early April and finally, I have mentioned the things that Mr. Petersen was reporting to the President and what the President was doing with that information that Mr. Petersen was reporting.

I think that the issue there was not whether it was grand jury information or not grand jury information. I think the question is how did the President use the material.

The CHAIRMAN. Mr. Doar, I would like to ask just one question.

In my recollection of the presentation and the conversations that took place between the President and Mr. Petersen, was there at any time any offer by the President to Mr. Petersen, who was then requested to inquire, that he be permitted, or that he would look at or hear any of the taped conversations?

Mr. DOAR. There was no request, there was no disclosure of the fact that the taped conversations existed.

The CHAIRMAN. At that time?

Mr. DOAR. At that time.

The CHAIRMAN. And when was the time, when was the date that the President asked Mr. Haldeman, however, to listen to the taped conversations?

Mr. DOAR. The 25th and 26th of April.

The CHAIRMAN. And that was only a few, or that was within the time frame that he had been talking to Mr. Petersen?

Mr. DOAR. Yes, it was.

I only have two more dates to mention to the committee before concluding. That is the June 4 conversation of the President and Mr. Ziegler and Mr. Haig when he listened to the tapes of the March 21 conversation and the other conversations, and where he indicated that he thought Mr. Haldeman could handle the March 21 conversation. I would think the committee members would want to reread that transcript. It is in the book. It is not in this little book, but it is in the printed book of the transcripts, in the printed volume, which is the Special Prosecutor volume, volume 9. Volume 9 is a better transcript. It is clear and it is a better transcription than the one that was presented to you at the time of the hearing. You may well want to listen to that tape as well. The date is June 4, and the June 4 tape is the one that we haven't talked a great deal about, but I think it is very, very significant on motive, purpose of the President.

And finally, I remind you—

Mr. DENNIS. Mr. Doar, is that volume 9 you mentioned of our big book?

Mr. DOAR. Volume 9 in the books, in the printed books, volume 9.

Mr. DENNIS. In the printed ones that we have recently gotten?

Mr. DOAR. Yes.

Mr. DENNIS. OK, thank you.

Mr. DOAR. And just to say one more thing, Mr. Chairman, that I also want to direct your attention to what the President said at that time about the March 17 conversation, and the fact that the President, when they gave us the March 17 conversation, only gave us 2 or 3 pages of that conversation relating just to the Ellsberg break-in. You may consider this as circumstantial evidence of purpose, motive in arriving at whether or not there is clear and convincing evidence that the President directed the coverup all through this period and continuing on right up to the present time.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Doar, do we have access to the White House tapes that we have in our possession? The reason for my question, all throughout our briefing book there are footnotes which indicate certain words were left out of the White House transcripts.

Mr. DOAR. Transcripts, yes.

Mr. HOGAN. White House transcripts.

Now, the reason I ask whether or not we have access to listen to the White House tapes is so that we can assess whether or not they were inaudible or whether or not they were intentionally left out of the transcript that was made public.

Mr. DOAR. No, no. We have some of the tapes. We don't have all of them. But, I think you do make a good point.

The first February 28 tape that we got from the White House, you couldn't hear a thing, not a thing, and it was only by going down and making a rerecording of that with our equipment you were able to hear the conversation. And it may well be that on some of these other tapes that the White House produced, that you won't hear some of the things that are on our tapes.

Mr. HOGAN. Well, this is one of the things that troubles me, because I recall Mr. Jenner having explained that we had superior electronic equipment to the White House and that our technicians went through and highlighted the frequency at which each participant in the conversation spoke and made a composite out of that so we had more audible conversation than the White House when they were typing their transcripts.

And yet I think the implication made by us and by our continual reference to the edited transcripts of the White House, and the press' indication that there were substantive differences in their transcripts and ours, there is a very clear implication in the mind of the American people that the White House intentionally distorted that when that may or may not be the fact.

Mr. DOAR. I think this is something you have to decide.

Mr. HOGAN. This is why I would like to have access to the tapes, to listen and to tell for myself whether or not, whether the typists who were typing would have heard what we had on our transcript or not have heard it.

Mr. SEIBERLING. Would the gentleman yield on that?

Mr. HOGAN. Yes; I yield to the gentleman from Ohio.

Mr. SEIBERLING. Has any analysis been made by staff as to the extent to which the omissions that we subsequently picked up were incriminating? In other words, not incriminating, but unfavorable to the President's position?

Mr. HOGAN. If I might—

Mr. SEIBERLING. Was that often the case?

Mr. HOGAN. If I might respond to the gentleman from my own observations, because this is something I looked very carefully at, many times our transcripts put the President in a more favorable light than his own, and that happens in a number of instances. In most instances, it is totally immaterial, it is just words that we got that they didn't get, but I do think it is important, because the American people have the impression that there has been an intentional effort to keep certain information from the public. And maybe that is the case.

Mr. SEIBERLING. An analysis of the proportions might be enlightening.

The CHAIRMAN. But Mr. Doar, is it not a fact, however, that when the first tape was turned over to us, the first tape that the White House produced, that that was completely inaudible and you requested that we be permitted to reproduce our own?

Mr. DOAR. One of the first tapes that was turned over to us. But, Mr. Hogan, Mr. Davis, and Mr. Nussbaum make the point that we don't know whether the tape that was turned over to us is the tape that the secretaries listened to when they transcribed it. If they listened to the original tape, then it was presumably very, very clear



and there are some notes in the testimony during the hearing down at Judge Sirica by Mr. Bull and Rose Mary Woods with respect to the February 28 tape, notes in their own handwriting that the audibility is very good, that the words are very clear and so that you really can't—I think your point is sound, but I don't think you can verify it from the material that we have.

Mr. HOGAN. Now, was Mr. Jenner's statement accurate that our copy is superior to the original because we use——

Mr. DOAR. No.

Mr. HOGAN [continuing]. The better electronic equipment.

Mr. DOAR. No. There is no way to get a copy superior to the original. But, our copy was far less inferior to the original than the copies we received from the White House because of our superior equipment.

And then we played the copy on equipment that had the ability to move the high and low tones around so that you could first kind of focus—it's like a camera. You focus on one voice and you listen and listen and listen and you get all the words of that voice, and then you focus on another voice by moving the dials. There are about 20 dials. By listening first focused on one and then on another voice you get a better transcription.

Mr. HOGAN. So to summarize it, the stenographer at the White House may or may not have an inferior tape than the ones that our people worked from, but there's no way for us, the members of the committee, to go there and try to ascertain that matter for ourselves by listening to the tapes?

Mr. DOAR. Well, there is no way within our power for you to do that.

Mr. HOGAN. Thank you.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. The conversation of March 17 lasted for how long? That is, between the President and Dean, and I understood it——

Mr. DOAR. My recollection was 55 minutes.

Mr. SARBANES. And we were given a 4-page transcript for that 55 minute conversation?

Mr. DOAR. Now, it may have been 35 minutes.

Mr. SARBANES. And then later we got the tape of the President's comments on June 4?

Mr. DOAR. That's right.

Mr. SARBANES. In which he spoke about what was in the March 17 tape, to which he had listened, is that correct?

Mr. DOAR. Right.

Mr. SARBANES. And that indicated that that conversation touched on many other matters that were pertinent to the inquiry but had not been furnished to us in an edited transcript, is that correct?

Mr. DOAR. There was a reference, I think there was a reference, that he didn't need to have Mr. Bull bring him the April 15 tape. Then there was discussions of other conversations with Mr. Dean during the month of March. It's 45 minutes.

Again, that's an illustration on that June 4 tape, the making of a superior copy on superior equipment which can draw out a lot of inaudible words than we had on the first transcription.

Well, Mr. Chairman——

Ms. HOLTZMAN. Mr. Doar, just to clarify the record, our copy is better than the White House copy, but it is not better than the White House original? Is that the point you are making?

Mr. DOAR. That's the point. There is no way that you can have that.

Ms. HOLTZMAN. Thank you.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Now that Mr. Doar has concluded his presentation, I just wanted to ask, can the staff make available to us, just as soon as it is available, and maybe on an expedited basis, the transcript of these remarks of yesterday of Mr. Doar and Mr. Jenner and the explanation that they have been giving us today.

Sometimes one passes over or misses a great deal of the rapid fire presentation, and it would be extremely helpful if we could have that as early next week as possible. Can that be made available to us, Mr. Doar?

Mr. DOAR. Well, I would think that, Mr. Chairman, that we might take Mr. St. Clair's remarks last week, and the remarks during this thing, and put them all together in a document, and make them available for internal committee use.

Mr. OWENS. And Mr. Garrison's remarks?

Mr. DOAR. And Mr. Garrison's remarks.

Mr. OWENS. But give them to us piecemeal as soon as you can get them.

The CHAIRMAN. They are not going to be available until they have been properly transcribed.

Mr. OWENS. But just as soon as they are available. That is the request that I was making.

Will they be available to the committee members?

The CHAIRMAN. They are being made available as they are being transcribed and as the transcriptions have become ready.

Mr. DENNIS. Mr. Chairman? Mr. Chairman? I think it's a very sound idea, but I might point out that we have got the essence of Mr. Doar's view in this very useful book. And the first thing given was Mr. St. Clair's, which ought to be transcribed by now, and I would like to get that as soon as I could so I would have something on both sides here to look at.

Mr. DOAR. And I wonder if you received yesterday——

Mr. DENNIS. I got his brief.

Mr. DOAR. We sent out two briefs to the committee members from Mr. St. Clair.

Mr. DENNIS. I would like his oral argument to go with his book.

The CHAIRMAN. Well, have they been prepared yet? Are they ready?

Mr. DOAR. They have been transcribed, yes. We can do that.

Mr. DENNIS. I think it would be very nice to have those.

The CHAIRMAN. Well, if counsel would make those available.

Mr. DENNIS. Like the President says, like in about 10 minutes.

Mr. DOAR. Well, in conclusion, Mr. Chairman, it is these events that I have gone over very rapidly, most of them which are undisputed, that I think the committee members have to look at individually and in totality to determine whether or not there is any explanation

for them except that there was, in fact, a coverup of this burglary and the other related consequences of the disclosure of that burglary directed by the President and carried out through the means that I have outlined for you this morning.

The CHAIRMAN. Well, I would like to state again, Mr. Doar, I instructed you before, but I would like to instruct you in the presence of the members of the committee, that regarding that reported account that appears in the Washington Post that purports to develop some new information which we have no knowledge of concerning the transcription that was provided for us by Mr. St. Clair on the March 22 conversation that occurred between Mr. Haldeman and the President at 9:11 to 9:35, I would ask you to please have your staff examine that closely and develop whatever pertinent information we may have, and if necessary, to communicate with Mr. St. Clair regarding that, because I believe that that is a matter of very serious import so that we not draw any conclusion one way or another until we have had a full opportunity to have had that examined. I think it is a matter that this committee would have to seriously consider. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman. Thank you, ladies and gentlemen.

I will cover primarily from the standpoint of principle, and as quickly as I can in view of the hour, and the matters that Mr. Doar related to you required a consideration of following a thread over a long period of time, and drawing your attention to the various benchmarks that you will want to consider, and the section I will cover is abuse of power which is the white tab that you will find toward the back of the book. I think it is the last one, and you received it sometime yesterday afternoon.

I will use the word evidence as I go through, and will all of you, please keep in mind that when I say there is evidence of this, or evidence of that, I am saying no more than that. It is for you to judge whether the accumulation of evidence is clear and convincing ultimately with respect to the ultimate fact. I am confident that no reference that I make will be to something to which there is no evidence, and in all of these areas, including that covered by Mr. Doar and others that we will cover during the course of today and on Monday, there is a greater or a lesser degree of conflict of evidence, which as learned lawyers you will resolve, having in mind all the factors, one way or the other, to reach your conclusion, professionally and conscientiously, whether the evidence is clear and convincing.

This section gets into, or does cover, fundamental constitutional issues, that is abuse, possible abuse, by the President of the United States of powers granted him under the Constitution illegally and improperly, not necessarily by any means. We do not mean to suggest the commission of a crime per se, other than in terms of the constitutional tones of high crimes and misdemeanors.

As you know from considering the debates in the 1787 Convention, the First Congress when the Bill of Rights was adopted and the State conventions, and going back to English history, the term "high crimes and misdemeanors" referred and had a context and denotation over those 400 years of crimes—offenses rather, I won't say crimes—of offenses that were serious against or respecting the Government itself. And that is what we are dealing with here.



I don't mean to suggest—that isn't so as to all of the remainder of the presentation that has been made to you for you to weigh and for you to judge in reaching your ultimate decision.

Because in the abuse of power area there are a number of separate matters, the flow and thread that does appear in the case of Watergate and what followed June 17, and respecting what preceded it, I will have to jump to divisions rather than follow a flow.

Now, there is evidence in the abuse of power area, and in the nature of it stated to you I don't want to be accused of provoking or using inflammatory language, and that's why I made this preliminary statement to you, there is evidence before you from which you may conclude, depending on how you judge the weight of that evidence, that the President used his powers of his office illegally and improperly for his personal and his political benefit.

Now, this covers several areas. Intelligence gathering, whether that demonstrates a continuing pattern of conduct, which I will touch on lightly as I turn back to the beginning of the section. That began shortly after the President first took office. Did he use the FBI? That is in this area of abuse of power. It is the question of abuse of agencies of the Government, institutions of the Government, the CIA, the Secret Service, and did he use the White House aides and agents to undertake surveillance activities, unauthorized by law and in violation of the constitutional rights of citizens.

As I said yesterday, the citizens are those for whom the Constitution was promulgated initially.

Now, those areas, this seriatim, not that they occurred in this order, but I will discuss them in this order.

Intelligence gathering, including the 1969 and 1971—17 wiretaps which were authorized by the President quite clearly on this evidence, and they were conducted by the FBI. The wiretap and FBI surveillance of Joseph Kraft.

Here you have freedom of the press involved and under the first amendment of the Constitution. The Huston plan, what happened to it, watered down as the case might be and what flowed from the consideration of it in the first instance.

The Secret Service wiretap of the President's brother. There you consider the fact that the Secret Service has no authority to conduct wiretaps. It is an agency which you, and those who have preceded you in the Congress over a good many years created to protect the President, but it is the FBI on domestic surveillance that has the wiretap authority. And in other respects, the CIA outside domestic surveillance.

Mr. BROOKS [presiding]. Would the counsel desist? Mr. Cohen?

Mr. COHEN. Just on your opening statement concerning the wiretap of Joseph Kraft, you mentioned the first amendment. Are we to infer that you suggest that we balance or are getting to a balancing process of the legality of the wiretaps, the authorization versus the right of the press to publish any information that might have dealt with the SALT talks, or anything else?

Is that an element that you are introducing for the first time for our consideration?

Mr. JENNER. No; I wasn't, Congressman Cohen. I was introducing. I was saying that here is starkly an illustration of a possible violation of the first amendment, of chilling, as we lawyers know in this area,

the exercise of the first amendment rights and other rights under the Bill of Rights that one of the ways that the offense and quite often the offense occurs by a process of chilling the right of free speech.

For example, efforts to chill the right of the exercise of the press of freedom of speech, and one example that is present here, and give it what weight that you see to give it, is the reference to the Washington Post in the transcripts that have been read to you.

Now, I just want to say I am not saying the weight. The weight is for you to judge. But here in this abuse of power area you do reach in a very material respect right into the Constitution and right into the Bill of Rights.

Mr. HUNGATE. Mr. Chairman? Mr. Chairman? Will the gentleman yield for a moment? That's all right, Mr. Chairman, may I be recognized briefly?

Mr. BROOKS. Certainly.

Mr. HUNGATE. As I recall it, counsel, we have a book somewhere, a procedural book about impeachment, and two or three of the judicial impeachment trials directly involved attacks on the press by the court. So, I think you are dealing in that as a possible impeachable offense and it has been used as such in judicial cases.

Mr. JENNER. The gentleman is correct. There is a paper that has heretofore been supplied to the committee.

Another freedom of the press, and, of course, fused with that is freedom of speech on the part of a newspaper reporter, is the FBI investigation of Daniel Schorr.

Then you have the investigating unit known as the Plumbers that was organized ostensibly, for you to judge whether it is strictly ostensibly, and there is evidence from which you may reach a judgment that the announced purpose of the Plumbers unit was not, in fact, the actual purpose, or maybe there was a combination of purpose; that is, as stimulated by the publication in the first instance of the Pentagon Papers, but as it moved along, the thrust changed.

When I say it changed, I do want to keep saying it is for you to judge, and now I am saying there is evidence along this pattern that it did change. And I will discuss that. I have just been giving you some background at the moment.

Mr. BROOKS. Mr. McClory?

Mr. McCLORY. Counsel, now you are insisting that you are not saying, but you are saying. I would admonish you not to say what you say you are not saying, because it is clearly implied in what you are saying that things that I don't know that are in the evidence, and if they are, I would like to have them.

I don't have any evidence that the Plumbers was created for anything except to try to close up leaks, and if it is true, we will judge the evidence, but I would rather not have you interpret it.

Mr. SEIBERLING. Would the gentleman yield?

Mr. FISH. Mr. Chairman?

Mr. BROOKS. Mr. Seiberling, a distinguished member of the committee.

Mr. SEIBERLING. Mr. Chairman, the whole purpose of this session is to get what counsel thinks the evidence adds up to.

Mr. BROOKS. Mr. Fish.

Mr. FISH. Mr. Chairman, I think counsel is going out of his way to repeat after every sentence that this is a matter that we will have to judge ourselves. I would like to ask one question for clarification.

In this section in our book in front us here that he is addressing himself to, does it go into the purposes of the Plumbers and the alternative purposes, et cetera, and the change in the purpose?

Mr. JENNER. Yes, it does, Congressman Fish.

Mr. FISH. So that evidence is before us?

Mr. JENNER. That's right, sir.

Mr. FISH. Thank you very much.

Mr. BROOKS. Counsel will proceed.

Mr. JENNER. And that is the second tab, the tan tab under this section and it's entitled "Special Investigations Unit."

Mr. FISH. Thank you.

Mr. JENNER. Was there concealment of intelligence-gathering activities, including concealment of the 1969-71-17 wiretap reports received from the FBI?

Was there concealment also of the Fielding break-in materials?

And then you have the next issue for you to consider, which is the part if any, that the offer of the FBI directorship to Judge Byrne played in any effort to continue to conceal or to induce a decision or a judgment or a result that would continue to keep the activities of the Plumbers in this area from becoming disclosed.

And the next area is the endeavor, if any, to use the Internal Revenue Service for political benefit of the President himself. Each of these that I mention to you is a tab under this abuse of power section in which the references to the record are set forth in some detail.

When I say record, it is the printed materials that you have already received, plus additional matters to which we call your attention.

Next, the appointment of Mr. Kleindienst, and the nature and character, as you may judge it, of his testimony before the Senate Committee on the Judiciary during the course of his confirmation hearings, both the first phase and the second phase.

The consideration by the President as brought to your attention by Mr. Colson and others and proof of a change, possible change of attitude, with respect to the confirmation of Mr. Kleindienst and whether that ought to be withdrawn in your judgment, then as to what you would reach because of that subtle change for a time. There was an ultimate resolution of it to go ahead with the confirmation.

Mr. DRINAN. Mr. Chairman, point of inquiry?

Mr. BROOKS. Father Drinan.

Mr. DRINAN. Point of information, counsel, that when we took up the Kleindienst matter before the staff issued or had several copies of documented evidence of the press during that entire period. I take it that that was not given to us, that extensive material released to the press, but I wonder if you could sum up what the thrust of that document would be in relation to the Kleindienst appointment. In other words, is there direct or indirect evidence that the President, in fact did know of the untruthful statements of Mr Kleindienst?

Mr. JENNER. We have in that tab, and I intended to turn to that, Father Drinan in due course, but I am just making a preliminary presentation at the moment.

Mr. DRINAN. All right. Thank you.



Mr. JENNER. I am really indicating to you, ladies and gentlemen, as best I can and as neutrally as I can do it, truly as neutrally as I can do it, and that's what I intended to be doing here, what the divisions are under the abuse of power, and to give you some references, some highlighting to which you will want to give attention as you will move through these tabs under the abuse of power section.

You have the 1971 milk price support decision. Is there sufficient evidence in your minds or from which you can conclude that the ultimate change in the decision of Secretary Hardin with respect to the price support decision, whether that was brought about by the President himself, who has no authority under legislation enacted by you to make that decision.

Now, I don't wish to go so far as to say he has no authority to discuss the matter with the Secretary, but the statute provides expressly that the Secretary will make the decision.

It is his and his alone to make. And, of course, the decision was made to fix that price support level at an  $x$  figure, low, and there was very vigorous political activity on the part of the milk producers brought to bear upon you, brought to bear upon others, representatives of our system of government, including the executive department, and was the change the result of a political decision rather than hardheaded judgment as to the economics of the situation as contemplated by you in the statute enacted.

Now, the last of these—

Mr. BUTLER. Counsel?

Mr. JENNER. Yes; excuse me.

Mr. BUTLER. On the milk—

Mr. BROOKS. Mr. Butler.

Mr. BUTLER. Mr. Chairman, may I inquire of counsel for clarification?

Mr. BROOKS. Mr. Butler.

Mr. BUTLER. The President's refusal to comply with the committee's subpoena has left the evidence incomplete as to whether the milk producers cooperative contributions were made with the intent to influence the President's official acts, and I am reading from page 4 of that tab. To what subpoena are we referring there?

Now, I think there was a 3-minute gap following the discussion or the conference there in the President's office with Connally and those people and there was 3 minutes which were said not to be relevant.

Do you have reference to that? I am sure you do. Do you have reference to any other subpoena?

Mr. JENNER. I don't know of those subpoenas and I will make a note, if I may.

Mr. BUTLER. Maybe Mr. Nussbaum can help?

Mr. JENNER. Mr. Nussbaum says he has the subpoena and may he respond?

Mr. BUTLER. Yes, sir, I'm sorry to interrupt. I just want to get this point on the record.

Mr. JENNER. That's right.

Mr. BUTLER. I understand that, counsel, and don't worry.

Mr. JENNER. I appreciate interruptions on that score.

Mr. BROOKS. Mr. Jenner, please don't welcome then, because you know this is Saturday.

Mr. NUSSBAUM. Congressman Butler, on June 24, a subpoena was issued by this committee with respect to the dairy matter which requested a number of conversations concerning that matter. It requested 18 conversations between the President and various people, including the President and Mr. Ehrlichman.

Mr. BUTLER. So, we have reference to that whole—

Mr. NUSSBAUM. Yes, sir. Yes; there were 18 conversations which were requested, not one of which was produced and that's what that has reference to.

Mr. BUTLER. That is all right. That is what I wanted to get clear in my own mind.

Mr. SEIBERLING. Mr. Jenner? Mr. Chairman?

Mr. BROOKS. Mr. Seiberling.

Mr. SEIBERLING. Mr. Jenner, I notice in the written presentation and in your statement there is no reference to what seems to me to be the key to this whole issue about the milk fund and that is that immediately after the President's decision there was a statement in the transcript, as I recall, by Connally saying to Colson or somebody, and I forget who, now you fellows have to get out and do your job, implying that now was the time to go out and get those pledges nailed down. And then following that, we have the meeting between Chotiner and Kalmbach and Nelson and I don't see any reference to that in here.

I wonder if you could comment on that, and is that not perhaps the most significant feature of all of this evidence?

Mr. JENNER. It is a significant feature. I don't, if you don't mind, Congressman Seiberling, I don't want to adopt the language that it is the most significant feature. I thought when I studied this yesterday afternoon and last night that we had reference to Connally. Yes; during the President's afternoon meeting on March 23, we refer to Secretary Connally there on page 3 under the tab, the milk tab, that during the President's afternoon meeting on March 23 when the decision was reached that Treasury Secretary Connally and the President discussed in detail with concerned officials the politics of the decision, and I draw your attention to book 6, pages 630 and 631.

Mr. SEIBERLING. Am I correct that Mr. Connally made some kind of remarks that now you fellows have to get out and do your followup or something to that effect?

Mr. JENNER. That is correct.

Mr. SEIBERLING. And, in fact, there was a followup then by Mr. Kalmbach, Chotiner, and Nelson?

Mr. JENNER. If you mean the followup of the evening preceding the price announcement?

Mr. SEIBERLING. Right, yes.

Ms. HOLTZMAN. Mr. Chairman?

Mr. JENNER. Mr. Chairman, may I say one more thing in response to Mr. Seiberling?

That is, the book references that are contained in this, what we tried to do is shorten up, and you will find things, I am sure, Congressman Seiberling, to which you had reference.

Mr. BROOKS. Would counsel proceed.

Mr. JENNER. Thank you very much, Mr. Chairman.

Now, the last of these is expenditures by the General Services Administration on the President's properties at Key Biscayne and San Clemente. If you have not yet received this morning, you will certainly have this afternoon the staff's full report on the subject matter of San Clemente.

It is not my intention to comment on the San Clemente matter.

And if I may be permitted, Mr. Chairman, to make a personal comment in that respect, it is my personal view that that is an area that it just doesn't offend me, and I am sure it does not offend many of the citizens of this Nation. It is included in this reference because it is just something for you to consider and give weight to it, and I am still stating my personal view here, with the permission of the chairman, that it doesn't quite rise—or maybe I will strike the word quite—rise to a level at which an article of impeachment may be predicated. It does bear upon the man, but more importantly what it does bear upon for all of you in your consideration is how the White House operated, how instructions came from the President to Mr. Haldeman, to others, and in this instant largely to Mr. Kalmbach or from the President to Mr. Ehrlichman and from Mr. Ehrlichman to Mr. Kalmbach.

And the President's personal and deep examination and participation in great detail on these various things.

So—but for the purpose of abuse of power, and this concludes my personal statement you have permitted me to make, Mr. Chairman, I just don't conceive of that as an abuse of power. But, it does have relevancy. It is something, it is a factor of this whole warp and woof for you to have in mind.

Now, Mr. Chairman, may I suggest that with the permission of you and your colleagues on the committee that I have talked now almost a half an hour and I could go into each one of these tabs, especially the illegal intelligence gathering and the Plumbers and the concealment of evidence of intelligence gathering activities and it would take some time. And also misuse of the IRS, for example.

And with your permission I will just turn to that tab, that is tab No. 4 in the abuse of power section and the evidence is there, and I think it is well in your minds and it is not complicated. And may I just cover that as illustrative of the items under this section.

Now, was the power of the Office of the President used to obtain confidential tax return information from the Internal Revenue Service, and was that power used also to initiate IRS investigations of taxpayers, the whole subject area in which citizens, about which citizens are most sensitive and most alarmed all the time.

Now, the first of those items is the Governor Wallace tax investigation. Back in early 1970, Mr. Haldeman directed Clark Mollenhoff, then special counsel to the President, to obtain a report from the IRS respecting its investigations of George Wallace, the Governor of the State of Alabama and his brother, Gerald Wallace. The assurance to the IRS by Mr. Mollenhoff was that the report was for the President, and you have direct evidence as to that.

He requested the report of the Commissioner himself, Randy Thrower, and I call him Randy because we have been friends for many years and I admire him tremendously, a splendid lawyer. That was given to Haldeman, that material thereafter was transmitted to



Jack Anderson who published an article about the IRS investigation of Governor Wallace and his brother on April 13, 1970.

Not only that, but it was done during Mr. Wallace's gubernatorial primary campaign. It is for you to judge as to whether the evidence is clear and convincing as to the intent for making that public for a political purpose, if it was to affect negatively Governor Wallace's candidacy in the primary.

I am not a student of Southern politics but as I understand it, the Democratic primary, at least in Alabama is virtually an election campaign.

Mr. SARBANES. Mr. Chairman?

Mr. BROOKS. Mr. Sarbanes.

Mr. SARBANES. Mr. Jenner, do we know the date of that primary?

Mr. JENNER. Well, this was early 1970, and perhaps Congressman Flowers, it was 1970, was it not?

Mr. FLOWERS. Mr. Chairman, am I under oath? It would be the Tuesday after the first Monday in May. Now the date May 7, it was May 7 this year.

Mr. JENNER. A fellow Alabamian who is sitting beside me, a member of the staff, has fixed the primary date as May 7, 1970, and the publication in Jack Anderson's column was in April preceding the primary.

Mr. SARBANES. Was this also the election in which Mr. Kalmbach testified when he was here that \$400,000 was sent to Governor Wallace's opponent in that primary in this same election?

Mr. JENNER. I don't want to misspeak. The answer to the question is yes.

Mr. SARBANES. Thank you.

Mr. BROOKS. Would you proceed, counsel?

Mr. JENNER. Thank you.

Next is the list of McGovern supporters. Now, the evidence is that during 1971 and 1972 there was the political opponents or enemies list that was circulated around the White House. You have heard testimony of Mr. Colson that it wasn't an enemies list, that the newspapers placed that name on it, and you have heard all of that pro and con evidence which you will have in mind and which you will study.

When I use the term enemies list, I am using it only in the sense of identification of that particular political list.

In September 1972, at the direction of Mr. Ehrlichman, Mr. Dean prepared these lists, a list of McGovern campaign staff and contributors and Commissioner Walters was asked that the IRS investigate and develop information about the people on the list, necessarily for use for political purpose. But Mr. Walters resisted successfully, saying that it would be disastrous to involve the IRS in assembling tax information on that broad a scale, and so he declined.

Mr. EDWARDS. Mr. Jenner, do you have any indication that the President was involved in that request to his staff?

Mr. JENNER. None other than the fact that—well, I think I had better answer your question no. We have no direct, hard evidence of that, other than the functioning and the ordinary functioning of the White House.

Mr. EDWARDS. In the Wallace case, though, we have the testimony that he requested it.

Mr. JENNER. That's right.

Mr. EDWARDS. And in this case, we do not have it?

Mr. JENNER. That's correct. We have no direct evidence here.

Now, 1972, in the midst of the campaign to reelect, Mr. Haldeman informed the President himself that Dean was, and I quote, "moving ruthlessly on the investigation of McGovern people, Kennedy, Kennedy stuff, and all of that too."

He didn't know, Haldeman didn't know, how much progress Dean was making and the President interrupted, and this is from the transcripts, and the President interrupted to say, "The problem is that's kind of hard to find."

And Mr. Haldeman told the President that Mr. Colson had "worked on the list," and that Dean was working "the thing through IRS." You will find that in the book of transcripts at page 1.

Mr. Dean then joined the meeting, and there was a discussion of using Federal agencies to attack those who had been causing problems for the White House. And you will find that at pages 10 and 11 and at page 15 of the printed transcript booklet from which Mr. Doar was reading this morning. And I do not want to take the time to read that which you have before you in that connection, other than to call this to your attention.

Now, the reluctance of the IRS was discussed, the reluctance of the IRS being these fine commissioners worrying about the use of IRS and that was discussed and you will find this in book 8 at page 333. And you will find there that Mr. Dean informed the President of his difficulties, difficulties in requesting Johnnie Walters, the Commissioner, to commence audits on these people. The President became annoyed and said that after the election there would be changes made so that the IRS would be more responsive to White House requirements.

The President complained that Secretary Shultz had not been sufficiently aggressive in making the IRS responsive to White House requests and Dean testified on the 11th of July before you as another citation.

Now, following that conversation with the President, Dean returned to the IRS and persisted. Commissioner Walters continued to resist.

Now, on the O'Brien investigation, which I am sure must very well be in your mind—

Mr. BROOKS. Mr. Fish. Pardon me, counsel.

Mr. FISH. Mr. Chairman, before we leave this episode, I gather we are just about to leave it.

Mr. BROOKS. Yes.

Mr. FISH. Could it be clarified for my purposes, doesn't this issue remain in limbo because of a portion of the conversation on the 15th of September that is in the possession of Judge Sirica that we do not have, that Mr. Dean said would illustrate the fact that he had discussed with the President the difficulties with IRS and Mr. Walters?

Mr. JENNER. Congressman Fish, thank you. There is that troublesome problem and as you will recall, because I did, for you on behalf of the staff handle all matters before U.S. district court judges in connection with matters that were of interest and need to you, and I have

described to you that in the hearing before Judge Sirica, to which he invited us to attend and comment, that he stated in open court that he had reexamined that portion of the tape to which Congressman Fish refers to determine whether there was reference in there with respect to abuse of the IRS and he found that there was material in that 17½ minutes dealing with that subject matter. He had not reported that theretofore, because under the mandate of the court of appeals, he was directed to examine that particular tape for the purpose only of reporting as to whether there was anything relevant as to Watergate.

And he had redetermined, on request of the special prosecutor subsequently, that he ought to look at the tape again, and since in the proceedings then developed before him the IRS was arising he should reexamine and look at it, and we reported he had done so and there was that material. He asked me to comment, as I reported to you, and I rose and requested the court on your behalf to permit us to listen to the tape. I did not ask at that juncture for a copy of the tape, but only that we might be able to listen to it to determine whether the material on the tape respecting alleged abuse of the IRS is sufficiently relevant and a probative force for you to consider.

Judge Sirica said his personal disposition was to do that and he has been very cooperative, as you know, but he felt that in reading the mandate of the court of appeals to him in that case limited him in his affording access to the section of the tape only to the special prosecutor. And in the absence of having that mandate modified, he regretted he could not do so, could not do anything about it.

But, you do have that much of an open hearing in open court and the transcript of what Judge Sirica said.

Ms. HOLTZMAN. Mr. Chairman?

Mr. BROOKS. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Jenner, aren't Mr. Haldeman's notes of that portion of the conversation probative with respect to a discussion of this matter?

Mr. JENNER. Yes; they are.

Ms. HOLTZMAN. How do they bear on the conclusion that there was an intention to obtain IRS materials to be used with respect to political enemies?

Mr. JENNER. Congresslady Holtzman, that is so, and that is for you to judge.

Mr. SARBANES. Mr. Chairman?

Mr. BROOKS. Mr. Sarbanes.

Mr. SARBANES. Mr. Jenner, as I understand it; Judge Sirica then indicated he would turn over that portion of the tape to the special prosecutors and then Mr. St. Clair took an appeal from that ruling.

Mr. JENNER. That is correct.

Mr. SARBANES. Where is that matter at the moment?

Mr. JENNER. That is pending under advisement on briefs and oral argument in the court of appeals and the court has not handed down its opinion.

I should add there, as I reported before, and forgive me, I had forgotten it at the moment, that Judge Sirica handed a transcript of the 17½ minutes to Mr. St. Clair in open court, directed him to study it at the side table. He adjourned court, recessed court for half an hour, advising Mr. St. Clair that when he returned he would like Mr. St.



Clair to respond whether there was any objection on the part of the President to the surrender of that tape and its examination by the special prosecutor and this committee.

Mr. St. Clair read that material. He did not respond that it was irrelevant. He did state that he must, as he has always done quite faithfully here, that the decision has to be one by the President, and he would consult the President.

The following week, and this was on a Friday, the following week, as a matter of fact, 1 week from that particular date, he reported to Judge Sirica that the President's decision was that the tape not be surrendered to the special prosecutor or anybody else. And Judge Sirica then entered his order directing that that be done, and that order was then appealed on behalf of the President by Mr. St. Clair to the court of appeals where the matter is pending.

Mr. BUTLER. In that regard, is the decision imminent at all in that area?

Mr. JENNER. I hope so.

Mr. BUTLER. Has it been argued in the court of appeals?

Mr. JENNER. It is on briefs and oral argument, taken on advisement on oral argument.

Mr. BUTLER. In other words, the next action is to be taken by the court itself?

Mr. JENNER. That is correct, sir.

Mr. BUTLER. Thank you very much.

Mr. JENNER. Now, the O'Brien investigation.

The evidence is that Mr. Ehrlichman received an IRS report concerning investigation of Howard Hughes' interests that included information on Mr. O'Brien, Democratic National Committee Chairman, with respect to his finances from a tax standpoint, and otherwise as well.

Now, something new that came to us, as you will notice on page 3 of this tab that Mr. Ehrlichman told Mr. Shultz—excuse me, that Mr. Ehrlichman later, after receiving that report, obtained information from Stans to the Commissioner, Roger Barth, about Mr. O'Brien's tax returns.

Now that is Senate select committee executive session of June 5, 1974, and it came to us, unfortunately, after the presentation we had made to you. But it is a—we will check if we have not actually delivered it to you in hand, we will see that it is done this afternoon.

It is my impression, and I wish to emphasize it is only my impression, that it has been delivered to you, but we will make sure of it, because it is of some evidentiary importance, at least.

Now, what occurred here, it is true, as you learned from the evidence, that the IRS was conducting an investigation with respect to Mr. O'Brien's taxes, but the result of the request and the telephone calls and whatnot from Mr. Ehrlichman, and his actual demand accelerated that audit materially.

You will recall the affidavit of Mr. Walters and Randolph Thrower that it was the policy in this year—that is, then the policy of the IRS that during an election year, audits and investigations with respect to politicians—and I am using this with a big "P"—that is, people engaged in campaigns and running for office—be deferred if there was no danger of the statute of limitations running out, be deferred

until after the election so that—and it was a sensible thing to do—so as not to fake the election, the electoral process. But this was speeded up and was at least an offense of that process.

Now, there is evidence here, the weight of which you are to judge, that about September 5, 1972, Commissioner Walters gave Secretary Shultz figures concerning Mr. O'Brien's tax returns, which he was to give to Mr. Ehrlichman—that is, the Secretary. And you will find that notation on page 4, footnote 1, SSC interview, on June 14, 1974.

Here again, this was something that came to us after the formal presentation. We will check it out to make sure that you have it and if we find that you do not have it or we have any doubt about it, we will be sure that you get it.

Now, what followed?

You heard Mr. Kalmbach testify that early in September 10, following 5 days after the O'Brien tax information had been given to Secretary Shultz and then passed on to Mr. Ehrlichman, that Mr. Ehrlichman telephoned Mr. Kalmbach at his country club in Los Angeles, or Newport Beach—I have forgotten which it was. I will not go through that because you heard it so freshly and so recently that you have it well in mind.

Mr. BUTLER. Well, wait a minute. Mr. Chairman?

Mr. BROOKS. Mr. Butler.

Mr. BUTLER. Mr. Jenner, are we now told that the figures that Mr. Ehrlichman gave to Mr. Kalmbach with reference to Mr. Greenbaum—and that is what we are talking about, is it not?—excuse me, the press, that they were going to was Mr. Greenbaum—

Mr. COHEN. Mr. Greenspun.

Mr. BUTLER. Anyway, the figures came from Shultz. And that is new information to us?

Mr. JENNER. That is new information.

Mr. BUTLER. Thank you.

Mr. JENNER. There are two factors of information here: one, a financial report, general financial report; and two, Mr. O'Brien's tax return information which came September 5 from Mr. Ehrlichman.

Mr. BUTLER. Thank you. I think I understand that, but I did not realize the transmission of information before.

Mr. SEIBERLING. Mr. Chairman, may I ask one further question?

Mr. BROOKS. Mr. Seiberling.

Mr. SEIBERLING. Was there not testimony in Mr. Ehrlichman's trial or somewhere that he was determined to get Mr. O'Brien convicted before the election?

Mr. JENNER. Yes, there was.

Mr. SEIBERLING. Should that not be in here, or reference to it?

Mr. JENNER. I have the virtual certainty that the transcript references that are given to you in this will make reference to that, Mr. Seiberling, but I will check it out for you.

Mr. EDWARDS. Mr. Chairman?

Mr. BROOKS. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Your Presidential connection here with the O'Brien information is that they are in the transcripts, or were?

Mr. JENNER. Well, on September 15, sir, during the meeting among the President, Haldeman, and Dean, the IRS investigation of O'Brien was discussed, pages 337–339. And you will notice the footnote:

This discussion, like the discussion about the IRS lack of responsiveness referred to in the previous footnote, page 3, is not reflected in the tape recording of a portion of the conversation that was furnished by the President to the committee.

It has not been furnished to us.

Mr. BROOKS. How do we know it? Mr. Jenner?

Mr. JENNER. We are about to make that answer. We want to be certain of our facts.

Mr. DOAR. Mr. Chairman, you will remember when Mr. Buzhardt called Mr. Thompson of the Senate select committee, the minority counsel, and gave him a resumé of the things that John Dean had talked to the President about, in that resumé of the September 15 conversation there is a reference to the fact that they discussed Mr. O'Brien's tax return. So that it came from that source, the proof that on that 15th of September conversation, presumably on the 17 minutes that we did not receive, that matter was discussed.

Mr. COHEN. Mr. Chairman?

Mr. BROOKS. Mr. Cohen.

Mr. COHEN. Was there also a question raised about Mr. Dean in reference to Mr. Shultz in terms of his "being a candyass" as I recall and not pursuing this matter vigorously? Is that with reference to Mr. O'Brien or to the political enemies list, do you recall?

Mr. BROOKS. Mr. Davis?

Mr. DAVIS. As I recall Mr. Dean's testimony here before this committee, that was in general reference to Mr. Shultz' unwillingness to cooperate with the effort to get information.

Mr. COHEN. I believe Mr. Dean also indicated that that conversation did not appear in our transcripts, which was discussed——

Mr. DAVIS. Yes, he indicated that that was discussed at the conclusion of the September 15 meeting.

Mr. BROOKS. Mr. Jenner will proceed.

Mr. JENNER. We will close this up as quickly as possible, in not more than 5 minutes, Mr. Chairman, the last division, tax information.

I have made these promises before, I think, and have failed 100 percent of the time.

Under subdivision "d" of this tab, commencing on page 4, you will find a running account of other efforts on the part of Mr. Dean in 1971 and 1972, persisting with pressures on or requests to, vigorous requests to IRS to supply tax data and to, in some instances in 1971 and 1972, which we will find in book 8, pages 166-170, 176, and 182, endeavoring to have tax audits made of certain persons, always political in character.

Now, on March 13, 1973, during a conversation between the President, Haldeman, and Dean, they discussed campaign contributions to the McGovern campaign, and the President asked Dean if he needed "any IRS stuff." Dean responded he did not at that time.

Dean said, "We have a couple of sources over there that I can go to. I do not have to fool around with Johnnie Walters"—that is the Commissioner—"or anybody, we can get right in and get what we need."

You will find that at page 50 of the printed taped conversations.

Now, you consider this in the light of the fact of the possible abuse of the power granted to the President by the Constitution to superintend the agencies and institutions of Government.



Now, in fact, it also is a crime, by statute enacted by you to interfere with the administration of the Internal Revenue laws and to divulge confidential information.

Now, one last comment. If it is a misuse of power, as the evidence would seem to indicate—whether it is clear and convincing, it is up to you—it is a challenge to the integrity of the tax system, which requires taxpayers to disclose substantial amounts of sensitive personal information.

That Mr. Chairman, is my summary, at least, of a couple of sections of this very long and extremely important phase of your constitutional investigation.

Mr. MEZVINSKY. Mr. Jenner, there is a point I want to raise about the tax matter. It is our understanding that the Joint Committee on Internal Revenue Taxation has continued their investigation into the politicalization of IRS and you did not make any comment on that.

As I understand, they have also requested certain audits to be reopened regarding friends of the President rather than enemies.

Are we privy to that information, and would either you or Mr. Doar care to make a comment on that?

Mr. DOAR. My information, and I do not know that it is complete, is that the Joint Committee was looking into the use of the audit section of the IRS to have information passed out of IRS to the White House or to sources outside of the IRS.

The other side of the investigation I do not have any knowledge on, whether that is continuing or not, nor do I know the exact status of the present investigation with respect to the first half of that question you asked.

I do know that they are investigating.

Mr. MEZVINSKY. If they are doing anything further or if they have any reports, I presume that we are in close communication, and we can get that information, can receive it—

Mr. DOAR. Yes.

We will check again, but as I say, the last time I checked, which was several weeks ago, my understanding was that the investigation was concentrating on the passage of the information out through the audit section, internal audit section of the IRS.

Mr. MEZVINSKY. The other point would be, and this may not be proper to raise at this time, but will we have a discussion as to the problem of IRS regarding the matters that were raised with the Hughes-Rebozo contributions?

Would that be a separate item or not regarding funds that were revealed by Mr. Kalmbach in his interviews that we have and he testified to last week? Is it proper to go into that?

Then the other item would be the gift tax consequences, supposedly, of the large contributions. Is that totally separate, or will that even be touched on?

Mr. DOAR. Well, that is totally separate. I do not know that we can touch on it for the members of the committee.

Mr. MEZVINSKY. Well, what about Hughes-Rebozo and the money there and the questions that are raised as to the funds that may have been channeled and that would have tax consequences as well as the IRS?

Will we discuss that or will that be presented?

I don't want to raise and belabor the point now. I just raise the point whether or not that will all be broached and discussed during the presentation.

Mr. DOAR. Well, there are questions raised and there is some evidence that would warrant investigation. But in our judgment, we cannot say what is the result of that. We have the Senate select committee's report and we have analyzed it and we have followed it and picked up, assembled some additional information ourselves. But all we felt that we were able to present to the committee, if anything at all, would be just a status report on the progress of that investigation. And without being in a position to reach a conclusion.

Mr. MEZVINSKY. Will we get that status report?

You know, we said way back when you went through the items, included in there was the \$100,000 contribution. Will we receive a status report for the committee on the investigation regarding the Hughes-Rebozo \$100,000 which was included, I think, in February or March, in the initial presentation of items that would be considered by the committee?

Will we receive that report? Is that coming?

Mr. DOAR. Well, we have that report prepared in draft form. What I am saying is that we have not, we do not believe that the investigation is completed.

Mr. MEZVINSKY. Well, can we at least have——

Mr. DOAR. And it is available for the members to examine. Whatever the members wish, we would make it available to the members. But I would say to you that neither Mr. Jenner nor I believe that the investigation is completed.

Mr. JENNER. That is correct.

Ms. HOLTZMAN. Would the gentleman yield?

Mr. MEZVINSKY. Sure. I will be glad to yield.

Ms. HOLTZMAN. I am a little puzzled, Mr. Doar, by your answer. I know that the Senate committee investigation is concluded, but when you say the investigation is not complete, are we conducting a separate investigation into this matter which has not been financed? Or is your statement that the Senate committee investigation is not a complete investigation?

Mr. DOAR. I am saying that the Senate investigation is not a complete investigation, furthermore we have not had the time to look at all the supporting data for the materials that are in the Senate select committee materials. There is considerable accounting data, there is a considerable tracing of funds that this staff has not had a chance to verify for itself. And I just think that the investigation is still incomplete.

I am not intending to criticize the investigation. It is a very complicated matter.

Ms. HOLTZMAN. Well, do you intend, if I may just finish that, do you intend to analyze for us the implications of Mr. Kalmbach's testimony regarding his conversation with Mr. Rebozo?

Mr. JENNER. It is our intention to draw that, redraw that, to your attention and give you our judgment analysis of it during the course of the discussions.

Mr. RANGEL. Mr. Chairman?

MR. HOGAN. Mr. Chairman, I know it isn't pleasing to the Chair to be critical of the staff, but I cannot resist making a few comments about the book presented to us yesterday.

I think it might have been more appropriate for the staff to understate things than overstate them with things that are not supported by the record and which are, in fact, deceptive.

For example, I direct your attention to page 2 of the tab entitled "Approval of Political Intelligence Plan."

It states, "The President has stated his belief that in politics, 'everybody bugs everybody else.'"

I think in the interest of fairness, the staff should have pointed out that the President was quoting Senator Goldwater with that quote, rather than using his own words.

I direct you to page 4 of our transcript for the accuracy of my criticism.

Second, I direct your attention to page 9 of the tab entitled "Containment July 1 to Election."

Page 8 and 9 set forth some statements of the President and they are followed by an editorial comment by the staff which says, "These statements were untrue."

Clearly, all of the statements made were not untrue. Some of them are, some of them are not.

It indicates that Mr. Dean conducted no independent investigation. I do not think that is supported in the record.

He conducted an inquiry—it says he interviewed no witnesses. His own words state that he talked to all the people at the White House trying to ascertain their involvement; he talked to Petersen, he talked to Gray; he talked to a number of participants in the Watergate matter. So I think whether or not—we have not, as far as I know, in any of this record defined what the word "investigation" means. And unless we have done so, I do not think we can make a categorical statement that he conducted no investigation.

In addition, we have made a great deal out of the fact that he never wrote any report and he never had any intention of writing a report. That, too, is not supported by the record.

In the transcripts, Mr. Dean states on page—in the March 22 conversation, page 158 of our transcripts and 1557, Dean says, "I think the proof is in the pudding, so to speak. It is how the document is written. And until I sit down and write that doc—" and he interrupts himself, and he says, "I have done part B. I have done the Segretti part."

So he obviously has written a report, by his own words.

Now, I do not quarrel with the staff's overall assessment of the evidence as indicating a concerted effort to cover up the matter, but what I do take very serious issue with are the overstatements in the analysis of the evidence which are not supported by the facts. And I think that the staff does a disservice to themselves, the committee, and the seriousness of this entire matter by not being zealously careful to insure that every word we use can be backed up by the record.

MR. SEIBERLING. Mr. Chairman, will the gentleman yield on that?

MR. HUNGATE. Mr. Chairman, I am two interruptions behind.

MR. HOGAN. I yield to the gentleman from Ohio.

MR. SEIBERLING. I would just like to ask if this is not the kind of thing, the argument of what these things are, that were going to



have Mr. Garrison do, and then after that, we can debate what this means. But I think at this point, we are trying to get what the staff thinks is the significance of the evidence.

Mr. HOGAN. Well, I would say to the gentleman that I would hope that if Mr. Garrison is going to put quotes in the mouth of a witness or the President, he would indicate that it was attributed to another third person and not the President himself.

Mr. SARBANES. I think, if the gentleman will yield on that point—

Mr. BROOKS. The Chair yields to the gentleman from Missouri, Mr. Hungate.

Mr. HUNGATE. I thank the chairman. I appreciate the point of the gentleman from Maryland. However—and the staff needs no defense from me.

But I do think at page 4 of the transcript, referring to the bugging quote, the President says, “Goldwater put it in context. He said, ‘Well, for Christ’s sake, everybody bugs everybody else. We know that.’”

Dean says, that was priceless.

“Mr. HALDEMAN. Yes, I bugged——”

The President, “Well, it is true, it happens to be totally true.”

What I am saying is I think while it is a quote of a Goldwater statement, it is a quote with approbation. I think that is not an uncommon method.

Mr. Colson referred to the frequent reference to please read “Six Crises,” read that. He said he had read it 14 times.

Now, in there, and I take it he does not discount things that he may not have said, but he quotes with approbation. He quotes a member with approbation.

You show me a good police force, and I will show you the stool pigeon who turned them in. We have to have people like Chambers to come in and tell us. I am not giving Mr. Chambers any great credit for his previous life. I am trying to find out if he is reformed. Some of the greatest saints in history were pretty bad before they were saints. Are you going to take their sainthood away because of their previous lives? Are you not going to believe them after they have reformed?

I don’t care who gives the facts to me, whether a confessed liar, thief, or murder—if it is facts, that is all I am interested in.

I think a quote that is a quote of approbation is appropriate enough.

Mr. HOGAN. Mr. Chairman?

Mr. BROOKS. Let Mr. Hogan conclude and we will proceed.

Mr. HOGAN. Thank you, Mr. Chairman.

I do not disagree with Mr. Hungate’s statement that in reading the whole context of this, one did certainly draw the conclusion that the President is indicating the veracity of the Goldwater quote, but I am saying it should have been indicated as a Goldwater quote, not a Nixon quote.

Also, I think where we are indicating all these statements of the President as untrue, one of them being that there is no involvement of the White House people, I direct your attention to the April 16 transcript at page 192 of our transcripts at the bottom of the page, where the President and Dean are talking, and the President says, “But you remember when you came in, I asked you the specific question, ‘Is anybody on the White House staff involved?’ You told me ‘no.’” Dean says, “That is right. And I have no knowledge.” And the President says, “You still believe that?”

And Dean says, "Yes, sir, I do."

So I mean the President did hear from Dean that there was no White House involvement. And I do not think that we are on sound ground when we say that these statements are not true. Whether or not they were actually involved is another question, but Dean did, by his own words, and the President's report to him that no White House people were involved.

Mr. BROOKS. The gentleman will proceed.

Mr. DOAR. Mr. Chairman, we have now just a short presentation of the material on subpoenas and the income tax from Mr. Nussbaum, summarizing that material in the book.

Mr. DENNIS. Mr. Chairman, before we go on with that——

Mr. BROOKS. Mr. Dennis.

Mr. DENNIS [continuing]. Very briefly, I would like to get back to the matter raised by some other members here, Ms. Holtzman or someone else.

This Rebozo money, I do not feel a bit critical that you have not done more about it, because it has just come up, pretty much, and the only evidence we have is what Mr. Kalmbach said here the other day.

But I am wondering whether we ought to be expected to vote on this matter before that is explored and determined. It seems to me it could be a fairly important facet of the investigation.

In the same connection, we are also hoping for a court opinion and I cannot see that there would be too much harm in investigating this while we are waiting on the court. We might be a little wiser both places. I just suggest that. Our resolution says, after all, a thorough investigation.

You have had no opportunity to do it on this matter. I am not critical of that at all. But I do not know whether we ought to rush ahead.

Mr. BROOKS. I want to thank the gentleman.

Mr. DENNIS. I appreciate the thanks.

Mr. BROOKS. I want to say that Mr. Doar—it is 12:20 now. We had agreed to adjourn at 12:30 for lunch. Do you anticipate that Mr. Nussbaum can complete this in 10 minutes? If not, I would want to put it over, because I do not want it to be interrupted by more questions and lunch. Counsel?

Mr. DOAR. I would think you could complete the material on the subpoenas, summarize that, because it is all laid out in the book for you. Is that right?

Mr. NUSSBAUM. Yes. I hope I can.

Mr. BROOKS. If the gentleman will proceed, we will operate on that basis.

The members will understand that we will proceed on that basis. Mr. Nussbaum.

Mr. NUSSBAUM. Thank you, Mr. Chairman.

As the committee knows, in early February, the House passed a resolution authorizing this inquiry and authorizing this committee also to compel the production of all papers and things necessary for this committee to conduct the inquiry. That was in early February 1974.

On February 25, 1974, Mr. Doar, under the authority of Chairman Rodino, and Mr. Hutchinson, wrote a letter to Mr. St. Clair making

the first formal written request for materials, for papers and things.

Essentially, Mr. Doar requested two categories of items: One, he requested materials previously furnished to the Special Prosecutor, tapes and certain listed documents. Secondly, Mr. Doar requested certain additional conversations, recordings and materials relating to additional conversations which was not in the Special Prosecutor's possession.

Now, this was done on February 25, 1974.

On March 1, 1974, the grand jury and Judge Sirica's court announced that it was handing down indictments in the case of *United States v. Mitchell* and also announced that it was submitting to the court for transfer to the House Judiciary Committee a grand jury report and presentation and submission.

On March 6, 1974, 5 days after the grand jury made this announcement. Mr. St. Clair announced in open court, and also by letter in response to Mr. Doar's letter, that the President would turn over to the committee all tapes and documents previously given to the Special Prosecutor.

Now, as you all know, these tapes and documents were given to the Special Prosecutor at an earlier time, shortly after the firing of Mr. Cox, in response to great public pressure. But in any event, Mr. St. Clair said these same materials which had previously been given to the Special Prosecutor would now be given to the House Judiciary Committee. He also stated in his letter that at that point in time, he was not willing to turn over anything else but was willing to enter into discussions with respect to this matter.

Now, in fact, when Mr. St. Clair wrote this letter and made this statement—I am trying to go fast.

Mr. FISH. What page are you on?

Mr. NUSSBAUM. I am not on any page. The section of the report to which I am making reference is entitled "Refusal to Comply." Everything I am saying, of course, is in our record, or is supported by letters which Mr. Doar has and which are in our files.

Now, it is important to know that when Mr. St. Clair and the President agreed on March 6, 1974, to turn over all tapes and documents given to the Special Prosecutor, at that time, it was already known that there was a grand jury report and a grand jury submission. And in fact, 12 of the tapes, 12 of the critical Watergate tapes were part of that grand jury submission. So regardless of what the President did or did not do with respect to the tapes—and he did agree to turn those over voluntarily—they would have come to the Judiciary Committee in any event. And they were on their way with the grand jury report and they were received by the committee in late March 1974.

Now, since the production of the materials which have been delivered to the Special Prosecutor in March 1974, this committee has issued eight subpoenas for certain materials. Now, what has this committee requested in those eight subpoenas?

First, it has sought recordings of 147 conversations totaling approximately—this is approximately—less than 100 hours of conversations. Two-thirds of those conversations, approximately two-thirds—98—were in the Watergate area and a number of those were in the early period—June 20 relating to the CIA—rather, June 20,



which was the first day the President came back and on which there is the 18½-minute gap; June 23 relating to the CIA; November 15 relating to discussions about Mr. Hunt's demands between Mr. Colson, Mr. Haldeman, and Mr. Dean; after December 8 relating to clemency; January 5 relating to clemency; February 13 and 14 relating to discussions between Mr. Colson and Mr. Mitchell.

What I am just pointing out to you is there were a number of pre-March 21 conversations requested among the number of conversations sought by this committee.

In addition to the 98 Watergate conversations, the committee sought 18 conversations in the dairy area, 19 conversations in the ITT area, 10 conversations in the domestic surveillance area, and two conversations in the abuse of IRS area, 147 conversations in total.

Second, the committee subpoena sought a list of Presidential meetings and calls for certain specified periods. These are known as the President's daily diaries.

Third, the committee sought documents from the files of the White House employees, such as Mr. Haldeman, Mr. Ehrlichman, Mr. Krogh, people like that; relating, specifically relating to the Watergate matter and to the Plumbers matter.

Lastly, the committee sought certain daily news summaries with respect to the ITT matter for a specified period of time, copies of the summaries which contained the President's notations. That is what the committee sought.

What has the committee received in response to its subpoenas, its eight subpoenas? It has received, first, edited transcripts of all or part of 33 subpoenaed conversations, plus 8 conversations which were not subpoenaed. It received, second, the notes—this is very recent—of John Ehrlichman which have been turned over to the Special Prosecutor in the course of the *United States v. Ehrlichman* trial and to Mr. Ehrlichman, notes which were extensively edited and, according to Mr. St. Clair, were edited by mistake.

Lastly, it received certain news summaries which were prepared during the period of the ITT matter, but without Presidential notation. These are not the actual copies which the President wrote on.

This is the total of the material the committee received in response to its eight subpoenas, which were issued over a 2- to 3-month period.

What did the committee not receive?

Mr. WALDIE. Mr. Chairman?

Mr. BROOKS. Mr. Waldie.

Mr. WALDIE. At the risk of breaking a train of thought, let me interrupt just to ask a question about Mr. St. Clair's representations about the edited Ehrlichman notes. I gather you said Mr. St. Clair said that was a mistake.

Are you referring only to the description of that incident which took place in this room?

Mr. NUSSBAUM. Yes.

Mr. WALDIE. Or have there been other conversations?

Mr. NUSSBAUM. No.

Mr. WALDIE. So the total knowledge of that we have is what took place in this room?

Mr. DOAR. No, he explained that to me at the counsel table here informally.

Mr. WALDIE. I understand it is a mistake how we got them, but did he say it is a mistake that they were edited or just a mistake that we got an unedited group of them?

Where was the mistake?

The mistake was that we got the unedited pack of notes from the Special Prosecutor, or was the mistake that they were edited?

Mr. DOAR. The materials were turned over to Mr. Ehrlichman, a copy of which was given to the Special Prosecutor. It was a mistake that we got another set that had further editing.

Mr. WALDIE. Yes, but did he explain how the editing occurred, which is the critical question?

Mr. DOAR. He did explain it, as I understand it, that it had some connection with the fact that two different people handled the notes at two different times.

Mr. WALDIE. What has that to do with editing the notes?

Mr. DOAR. Well, I am giving you the explanation that he gave to me.

Mr. WALDIE. OK. All right.

Mr. NUSSBAUM. I have indicated what the committee requested. I have also indicated what the committee received.

I would like to just touch upon quickly what the committee did not receive in response to its subpoenas.

One, the committee, in response to its subpoenas, did not receive a single tape recording. It did receive, to be sure, 15 minutes of additional conversation on the September 15, 1972, tape recording, but that was not a response to its subpoenas, that was an accident which was caused when the staff went down to the White House to make a re-recording of the September 15 conversation. But it did not receive a single tape recording in response to any of its subpoenas.

The committee also did not receive a single document in the files of the White House employees relating to Watergate and the Plumbers, as requested by its subpoenas. It did receive documents from the White House which had previously been given to the Special Prosecutor prior to the issuance of our subpoenas, but in respect to the things, to the documents requested by the subpoenas, the committee did not receive a single document.

As requested by the subpoenas, the committee also did not receive a single daily diary in response to its subpoenas.

Thus, in sum, the bulk of what the committee received from the President—especially in the area of tapes which, as you all know, I gather, is the heart of some of the evidence, at least—is merely a duplicate of what the Special Prosecutor had received months earlier in October 1973, after litigation and after the firing of Special Prosecutor Cox.

In response to its own subpoenas for other material, other tapes, other documents, the committee received certain edited transcripts, certain edited notes, and some news summaries.

Now I do not intend, and I am sure you do not even want me to, to deal with such issues as the reliability of the edited transcripts. The committee itself can make that judgment in view of the comparisons. That is general or specific.

The March 17 edited transcript has been discussed here today. The fact that it is only a small portion of a larger conversation which deals

with Watergate, as indicated by the memorandum or the information Mr. Buzhardt gave Mr. Thompson of the Senate select committee, I am not going to deal with that particular issue now. The committee will have to judge for itself the reliability of the edited transcripts. I will just touch upon the last item of concern to this committee, which is discussed in the report of the summary of information, which has been directed to the question that you have to consider, whether this failure to comply is an impeachable offense.

The precedents are set forth in the summary report. The precedents indicate that of 69 previous impeachment inquiries—that is including judges and one Presidential impeachment inquiry—in only one case in which the plea of self-incrimination was put forth was there ever any challenge, any challenge to subpoenas or requests seeking production of materials and other documents. This, of course, includes the impeachment inquiry involving Andrew Johnson.

I am not going to refer to—they are referred to in our report—the statements of Presidents—Washington, Buchanan, Polk—about the power of the President with respect to production of evidence.

Mr. DENNIS. May I inquire as a matter of information, were subpoenas for documents issued in *Andrew Johnson's* case against the President or not?

Mr. NUSSBAUM. Yes, requests were made.

To answer your specific questions, I do not know of any specific subpoenas issued in the *Andrew Johnson* case. I do know requests were made and requests were complied with.

Mr. DENNIS. Such requests as were made, he complied with, right?

Mr. NUSSBAUM. That is correct.

Mr. DENNIS. But there was no testing of subpoenas or anything like that?

Mr. NUSSBAUM. Correct.

I am also not going to discuss, although I am going to bring it to your attention and you will have to make this judgment yourself, whether or not the President's actions in response to the committee's subpoenas might be in violation of such statutes as title 2, United States Code 192, which makes it a misdemeanor not to comply with a congressional subpoena—which makes it a misdemeanor to be in contempt of Congress in that respect, or title 18, United States Code, section 1505, which involves obstruction of a lawful inquiry.

I gather, and this is general, that on the most fundamental issue, and this is alluded to in what we have submitted to you, and the thing you have to deal with, I gather, is really logic and common sense in how you approach this issue—if the power of impeachment is to have any vitality, it is up to you to find whether or not it encompasses the power to conduct a full and thorough investigation and whether that in turn means the right to secure papers and things and other things from the subject of that inquiry, from the President, especially when the inquiry is being fairly conducted, especially when the issues posed—I am talking about the substantive issues—Watergate, ITT, and other things—are substantial issues, not frivolous issues, and especially when the subpoenas are limited, precisely drawn, and fully justified before they are issued.

That was the situation, I think you can find, in this case, but again it is for you to find.



Thus in considering—I think you can also consider whether the President's conduct is an impeachable offense, in trying to determine whether it transgresses the Constitution of the United States, the conduct that he has exhibited toward the committee; you can ask yourself the consequences of the President's action in failing to comply.

I think you can ask yourself, and you should ask yourself the consequences of the President's actions in failing to comply with the committee's subpoenas if those actions are not remedied.

Mr. McCLODY. Mr. Chairman? Have you finished?

Mr. NUSSBAUM. No, I have just 5 more minutes, 2 more minutes. I am racing through.

Mr. HOGAN. That is the big problem. We are not that hungry.

Mr. DENNIS. Mr. Chairman?

Mr. McCLODY. I have a question, but I am going to save it.

The CHAIRMAN [presiding]. You complete your statement.

Mr. NUSSBAUM. I think you should ask yourself, after this is over, what kind of vitality will be left to the impeachment power, what kind of vitality will be left in our process if, in fact, a failure to comply with subpoenas is not remedied in some fashion or another.

I think you can ask yourself, after this is over, after this inquiry is over, what kind of role will be left to the House of Representatives as a check on improper Presidential conduct, if such conduct exists with respect to any President.

All I am posing is, really, questions that you can ask yourself or should ask yourself in considering this issue. The answer to those questions are answers that you must provide, not we.

What it comes down to is this, and we say this in our memorandum, but again we say this subject to your consideration, that you can find that in refusing to comply with limited narrowly drawn subpoenas which seek only materials necessary to conduct a full and complete inquiry into the existence of possible impeachable offenses, that you can find that the President has undermined the ability of the House to act as the grand inquest of the Nation.

You can find—it is up to you—that his actions threaten the very integrity of the impeachment process itself, that it would render nugatory the power of the legislature as the representative of the people to act as the check on Presidential conduct.

For this fundamental reason, the staff states in its presentation, you can find, I repeat as Mr. Jenner repeats, that the choice is yours. You can find that the President's refusal to comply with the committee's subpoenas is itself grounds for impeachment. Thank you.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McCLODY.

Mr. McCLODY. Mr. Chairman, this is a very impressive section that has been provided for us. I just have one question.

I was interested at an earlier stage in presenting a resolution of inquiry or considering the subject of contempt or censure or something like that as a result of the President's failure or refusal. Is the failure of our committee to have taken such action, does that decrease, diminish this as an impeachable offense?

Mr. NUSSBAUM. This is also discussed to some extent in the summary of information and it is the staff's belief that it does not diminish.

I think the most powerful reason why it should not diminish is because, in weighing what kind of consequence you should give to the President's compliance or noncompliance with subpoenas, in weighing that you also have to consider the substance of the inquiry generally.

Is it a reasonable inquiry? Are there substantial issues? And you really cannot do that until you reach this stage of the inquiry at this particular point, when you see all the evidence on Watergate, on ITT, on milk, on abuse of power—only then. It is no longer a sort of issue considered in a vacuum. It is an issue considered in the context of the total case. Only then can this committee reach a decision as to how to respond to the President's failure to comply with the subpoenas.

So that is why my answer to your question, Congressman McClory, is that the failure of the committee earlier, before the evidence is presented, to act on the question of contempt or noncompliance does not prohibit the committee from acting in this issue now.

Mr. COHEN. Mr. Chairman, is this an advocate's position?

The CHAIRMAN. He said you can find. [Laughter.]

Mr. SARBANES. You should see him when he is really advocating.

The CHAIRMAN. Before we recess, I would merely like to state that as soon as we resume, we will hear from Mr. Cates and he has some pertinent references to make regarding the questions that have been asked on the money situation and payment between the President and Hunt, a question that I think has been asked by any number of us, and I think that Mr. Cates will be able to bear upon that. I will ask him to make the first presentation on that this afternoon.

Mr. RANGEL. Mr. Chairman, may I make an inquiry of staff?

The CHAIRMAN. Yes.

Mr. RANGEL. I would like to ask for the record whether or not staff has completed an investigation of the facts and circumstances surrounding the airplane crash on which Mrs. Hunt was a victim?

Mr. DOAR. No, we have not, I mean in the sense that I do not know of any basis that would suggest or any substantial basis that there was any further lead to follow in connection with that matter.

Mr. RANGEL. Well, I had turned over to the committee information that I had received that reached a different conclusion, and I just hope that I might get something officially from staff indicating that a review of the facts did not warrant a conclusion that there was some wrongdoing involved.

Mr. DOAR. We can do that.

The CHAIRMAN. We will recess until 1:45 p.m.

[Whereupon, at 12:40 p.m., the committee recessed, to reconvene at 1:45 p.m., this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. Before the committee proceeds, Mr. Brooks has a question, I believe, to direct to counsel.

Mr. BROOKS. I wanted to point out that it was my understanding that Mr. Jenner, in his very interesting dissertation before the committee, observed that as a personal opinion he did not think that the activities of the President in Key Biscayne and San Clemente were the best of those items that might be, about which might be drawn an article of impeachment. And I would like to observe, just briefly,

to the committee members that they do have a copy of the expenditure of Federal funds in support of the Presidential properties which was a rather severe evaluation of that expenditure of some \$17 million of Federal tax funds on and in support of those Presidential properties.

It was endorsed by the Government Operations Committee, 36 to 0 with substantial support from Republicans and Democrats. It reflected that \$92,000 of personal income was allocated to the President's income by the Joint Committee on Internal Revenue when they evaluated this material. The Internal Revenue Service of the United States made that same evaluation.

I think it was a rather conservative evaluation of the amount of money spent for personal, not profit, but personal account on the President's three houses and on that facility in the Grand Bahamas.

And I would point out that they did seem to reflect that there was a capital gain of some \$117,000 of the transfer of a part of that San Clemente property.

I would submit to the members that to permit the unauthorized expenditure of such funds, illegal expenditure of such funds which were not only permitted, authorized, encouraged by the President and his chief assistants, and Mr. Kalmbach wrote numerous letters exhorting the GSA and the Secret Service to put in installations for the sole convenience of the President without any relationship to security. I would submit that these illegal expenditures are pretty well substantiated by a finding of the Joint Committee of the IRS and by the United States IRS and would make an excellent basis for an article of impeachment, if we believe there is anything wrong with spending Government money for personal gain.

The CHAIRMAN. Mr. Doar, I understand that we have a presentation on taxes.

Mr. DOAR. That is a short presentation that Mr. Nussbaum will finish.

The CHAIRMAN. Then we will hear from Mr. Cates.

Mr. DOAR. Yes.

The CHAIRMAN. Mr. Nussbaum.

Mr. NUSSBAUM. Thank you. I will try to make this fast.

[Chorus of "noes."]

The CHAIRMAN. You don't have to try to make it fast.

Mr. HOGAN. You can make it brief, but not fast.

Mr. NUSSBAUM. Thank you, Congressman Hogan.

With respect to the income tax matter, the basic findings have been set forth in the book, statement of information, we initially presented to the committee, and some of these facts are reviewed in a summary of information which we recently handed to the committee. I just wanted to touch on certain of the highlights, and perhaps certain of the questions that the committee should look to and ask itself.

The first thing I want to do is set forth a number of what must be considered undisputed facts. One, the President's 1969 income tax return, which he signed, contained a deduction for a gift of papers of a value of \$576,000, which gift was stated in the income tax return to be made on March 27, 1969.

Now, there is no question that the IRS and the Joint Committee have determined as a matter of fact, as a question of fact, that no



gift was made on that date or at any time before the deadline which was July 25, 1969.

Second, the \$576,000 gift of papers was purported to be made by a deed, signed by a junior member of a White House staff, an attorney named Mr. Morgan, and on its face was purported to be executed on April 21, 1969. There is no longer any question, and no one disputes that it has been determined, that the papers constituting the gift were not finally selected until March 1970 and the deed itself, this piece of paper, which is dated April 21, 1969, was, in fact, contrary to the notarization, not executed until April 10, 1970.

It was also claimed that there was a 1969 deed, but that has never been found, it has never been produced. And as the committee heard testimony from Mr. Kalmbach, that while he was present when the individuals involved in the alleged execution of that deed on April 21, 1969, he did not see the deed executed, did not hear it being discussed, did not hear a gift of papers being discussed on that date of April 21, 1969.

Mr. Kalmbach also stated, to be fair, that it could have been executed outside of his presence, and he also stated if his partner, Mr. DeMarco, said that it was executed on that date, it is his opinion that his partner is an honest and fair man who would not lie.

Third, the fact which is uncontradicted is that the donee of the gift, the person getting the gift, the United States, the Archives, did not believe as of the end of 1969 that any gift had been made.

Fourth, the appraiser, Mr. Newman, who was more than the appraiser in a sense, because it was his duty to select the papers that constituted the gift, he did not believe at the end of 1969 that a gift had been made.

Fifth, there is also undisputed, and this is set forth in our statement of information after the investigation began of this matter in 1973, stories began to change by Mr. DeMarco, Mr. Newman, and Mr. Morgan. Stories began to conflict with each other, especially Mr. Newman and Mr. DeMarco. Documents proved to be erroneous, included in the affidavit which was contained in the tax return itself; the affidavit of Mr. Newman is erroneous because he said he looked at the papers in April 1969 when he now acknowledges that he didn't. And also, documents turned out to be missing, such as the 1969 deed, and the notes of the accountant, Mr. Blech, with respect to the conversations in May 1969.

And the final set of uncontradicted facts is that presently a grand jury investigation is being conducted by the Special Prosecutor into whether any fraud was committed by Mr. DeMarco, Mr. Morgan, and Mr. Newman in connection with the preparation and execution of the President's tax returns.

No; those facts really cannot be disputed. The fundamental question to this committee, it can be stated in this way, or one way to state it, is whether reasonable men could reasonably believe that the President of the United States, when he signed these income tax returns on April 10, 1970, knew that he did not make a gift of papers of over a half a million dollars prior to July 25, 1969.

Now, the initial task and the basic task, I gather, for this committee, is to look to proof of the President's involvement or lack of involvement with respect to his own tax matters. Now, in this regard,

the record before you shows the following, and these are also uncontradicted facts.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Yes, Mr. Flowers.

Mr. FLOWERS. I have got to take issue with the uncontradicted aspect of what Mr. Nussbaum is saying and I don't know when the appropriate time is. I think there is some contradiction on whether or not the donee thought a gift had been made.

Mr. NUSSBAUM. No, sir, there is no contradiction as to whether the donee thought. There are memorandums, which we pointed out to you.

Mr. FLOWERS. Why is it that the donee still claims the papers?

Mr. NUSSBAUM. Because there is no question, Congressman, that a gift has been made as of this date. By April 10, 1970, a deed was executed. It's been delivered to the Archives, so there is a deed now.

Mr. FLOWERS. Dated what?

Mr. NUSSBAUM. The deed is dated March 27, 1969. It was executed on April 10, 1970. It has now been given to the Archives. The gift has been made.

The IRS and the Joint Committee did not say, Congressman, that the gift has never been made. The issue is whether a gift was made prior to July 25, 1969. That's why the President is not getting his papers back. He made the gift. The gift was clearly made, at least by April of 1970. The deed was signed on that date. The deed was delivered to the Archives.

The issue is whether the gift was made prior to July 25, 1969, as stated on his income tax return.

Mr. McCLORY. Will the gentleman yield?

Mr. FLOWERS. Yes, sir.

I think this is very important, and I just could not let it pass without saying this. I am not convinced frankly, sir, because I think the matter of a gift is a matter of intent, particularly in this case where you have the execution of this deed and that the emphasis is being placed on by a junior assistant. The matter of the Presidential intent is when the gift was made in my judgment, and I think there is some contradiction here, and I think it ought to be noted.

Mr. McCLORY. I thank the gentleman for yielding. And I think it is true that you do not need a deed, that you do not need a sheet of paper in order to constitute a gift. And while there is some controversy as to whether or not the property was separated from that standpoint, there was delivery and it was in the possession of the Archives at this earlier date.

And the controversy as to Mr. Newman, who swore originally an affidavit and then repudiated his affidavit, still leaves this controversy. It would seem to me, as to the question as to whether or not—

Mr. FLOWERS. I do not take issue with the fact that you can argue what you are saying.

Mr. NUSSBAUM. Yes, sir.

Mr. FLOWERS. That you can argue it, but I only take issue with the uncontroverted aspect of it, because it is controverted, in my own mind. I know.

Mr. NUSSBAUM. You have to pardon me, Congressman, because I was a bit unclear. I was not saying, and I did not intend to say, that it was

uncontradicted that a gift was made prior to the date. All I was saying, and I was running too fast, is that it is uncontradicted that the Internal Revenue Service and the Joint Committee have found that a gift was not made prior to July 25, 1969.

Now, I am suggesting, Congressman, that you are not necessarily bound by that finding, that you can go behind that finding, you can look at the matter itself—

Mr. EDWARDS. Mr. Chairman, may I ask a question too?

Mr. NUSSBAUM. And you can determine, if you so desire, that the IRS and the Joint Committee are wrong.

I would also want to add one more thing to what I say. Whether or not a gift is made does not solely depend on intent. To make a gift you need intent, you need delivery, as Congressman McClory noted, and you also need relinquishment of dominion and control, and this is according to the Joint Committee's analysis, and there is also an issue of whether you need acceptance by the donee, so it is not only a question of intent. You need relinquishment of dominion and control.

Mr. FLOWERS. You don't need acceptance if there's a beneficial gift, and there's no question about that. I don't think. I don't intend to argue about it. I just—

Mr. NUSSBAUM. No; and I don't, and I hope I'm not sounding like I am arguing about it, because I don't intend to either.

Mr. EDWARDS. Mr. Nussbaum, in judging the seriousness of what the President did or did not do in this instance, don't we get back to whether or not it was negligence or fraudulent, and his state of mind at the time?

Mr. NUSSBAUM. Yes; I think that is a fundamental question, and what I intended to do now is really to turn to the proof in the record before you with respect to the President's action or lack of action, with respect to his tax matters, because this bears on the questions knowledge or lack of knowledge on this subject.

The first thing you can look to with respect—

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. I just want to be clear on this other point.

In effect, what you have said is that both the Joint Committee and the Internal Revenue Service have made a finding, as far as they are concerned, a finding of fact that no gift was made prior to July 25, 1969?

Mr. NUSSBAUM. Correct.

Mr. SARBANES. Therefore, there was no entitlement to deduction on the President's income tax return.

Mr. NUSSBAUM. Correct.

Mr. SARBANES. Now, a gift may have been made after that date, which would entitle the Archives to hold on to the papers?

Mr. NUSSBAUM. That's right.

Mr. SARBANES. But the fact that a gift may have been made after that date is irrelevant to the question of the propriety of taking a tax deduction, is that correct?

Mr. NUSSBAUM. That's right.

Mr. FLOWERS. Would the gentleman yield?

Mr. SARBANES. Surely.

Mr. FLOWERS. But the Joint Committee and the IRS don't make the finding that a gift was made after that date. No one has made a



finding that a gift was made after that date. We only know that the Archives claim that a gift was made. Isn't that correct, sir?

Mr. NUSSEBAUM. Because the Archives——

Mr. FLOWERS. They don't say when it was made, they say a gift was made, and we hold on to what we have, because it's ours?

Mr. NUSSEBAUM. Because the Archives have received a deed which has not been repudiated by the donor of the gift.

Mr. FLOWERS. That's dated what?

Mr. NUSSEBAUM. It's dated March 27, 1969. It's purported to be executed as of April 21, 1969. In effect, it was executed on April 10, 1970, but they do have a deed.

Mr. FLOWERS. And they are claiming under that deed?

Mr. NUSSEBAUM. That's correct, that's correct.

That deed is the basis, that deed is the basis of their claim that a gift has been made. The issue as to when it was made has been determined by the IRS and the Joint Committee, and also is an issue for you to determine.

Mr. MEZVINSKY. Mr. Chairman, would the gentleman yield?

I mean, the point we really have to decide is the tax question of whether or not this was a legitimate gift and whether the President was involved, and I think on the tax question, what Mr. Nussbaum was trying to say is that on the tax matter, as to a legitimate deduction, both the Internal Revenue Service and the Joint Committee have made a ruling that it would not be allowed and that for tax purposes, for the deduction of over \$500,000 that it would not be allowed.

As to the question of whether or not it is a legitimate gift, that is a separate item. But, the point that is in question is whether we, on the tax matter alone, view that as acts by the President that could result in——

Mr. SARBANES. Except the handling of the deed paper becomes pertinent because you have a deed that's dated in 1969, and purportedly made then, which was placed on paper, which indicates from the Xerox marks that that paper was only available to you in 1970, and contains on Xeroxed paper the original signature, clearly indicating that that paper was signed not in 1969 but in 1970.

Mr. MEZVINSKY. That's right.

Mr. SARBANES. The deed that was supposedly signed in 1969 has never been found.

The CHAIRMAN. Why don't we just wait, because that's what I think Mr. Nussbaum is going to be commenting on.

Mr. NUSSEBAUM. Yes, fine.

The CHAIRMAN. He's going to be developing the motivation and the actions which bear on this question, so I think if we would defer asking questions, we would probably get some of the answers we are looking for, whether we accept them or not.

Mr. BROOKS. Will the Chairman yield for a very brief observation, not a question?

And the observation, Mr. Nussbaum, is that I find your analogy very, very similar to the same type of thinking exhibited by this Mr. DeMarco who was the President's lawyer in California when he sold the land to Abplanalp and Rebozo. They set up the deed as of December or November of one year, they all said that's when the deed took place and was signed. It was not surveyed until after the Christmas

of that year, a month later, and it was not actually signed until January of the next year. They later admitted, after denying it and saying that I was misleading them and misrepresenting the facts, they later admitted, his lawyers, that they had just changed it, they had just backdated it, it was just pro forma.

But, they had that deed signed and were swearing and saying that this was the deed signed in December before, and citing the meets and bounds description of that property that he later sold that had not been located by the surveyor until after Christmas of that year.

So, this is just the pattern of announcing the date of something and not having done it until much later.

Mr. FLOWERS. Surely the gentleman is not——

Mr. BROOKS. And it's not directly related, but it indicates a pattern of DeMarco's operations. He doesn't think there's anything wrong——

Mr. FLOWERS. But there's all the difference in the world between personal property and real estate and I don't think we can mix those apples and oranges.

Mr. BROOKS. And I want you to understand Mr. DeMarco is not above saying we signed it on one day when the meets and bounds had not been determined for 30 days.

Ms. HOLTZMAN. Mr. Chairman, I just have one question.

Then the issue of tax liability is a different question from the issue of fraud we are considering, isn't that really what you are trying to get at, Mr. Nussbaum? Because on the issue of tax liability, the President has, in essence, conceded the IRS finding that no gift was made by paying the tax for that period of time and not protesting that in tax court, isn't that correct?

Mr. NUSSBAUM. Well, yes, but really I think Congressman Flowers is correct. There are two fundamental issues and he is saying that you have to deal with both of them, and I agree you have to agree with both of them.

The first issue is, the first issue is was a gift made before July 25, 1969. The IRS and the Joint Committee say no, but Congressman Flowers says, and I think he's saying, in effect, it's your obligation, you know, to make your own judgment on that. And I would agree with that. It is your obligation.

And a second question is if you conclude as the IRS concluded and the Joint Committee concluded that a gift was not made prior to July 25, 1969, then the second question is what did the President know or not know with respect to that particular question, and that's really what I am discussing now. But I don't mean to say that the committee is precluded from looking behind the Joint Committee and the IRS finding. I am not discussing that at length right now. I am really discussing of the President's knowledge or lack of knowledge, involvement or lack of involvement, and factors which bear on that issue.

Ms. HOLTZMAN. But the question, and I am not sure you answered, the President has, in essence, conceded the finding of the IRS with respect to the tax liability on that. He has paid the tax and he has not protested in the courts.

Mr. NUSSBAUM. But if you consider this analagous to a criminal fraud proceeding, the President has not and cannot be, has not taken the position—he has not conceded that gift was not made by July 25, 1969. Yet, for the purposes of paying his taxes—well, no, what he has

said is I don't agree with you to the IRS, I don't agree that the gift hasn't been made prior to July 25, 1969, but I am paying my taxes, and he paid his taxes for 3 years with respect to that.

Now, with respect to this issue, with respect to this issue of the President's knowledge or lack of knowledge, involvement or lack of involvement, what I want to do is really point your attention to certain things in your record which pretty much directly bear on what the President's activities were in connection with the gift of papers and matters related to taxes.

Mr. HUNGATE. Pardon me, Mr. Nussbaum. You said the President paid his taxes on this issue?

Mr. NUSSBAUM. He paid his taxes, the state of the record is he paid his taxes for the years 1970, 1971, and 1972. He has paid for those 3 years. He has not paid taxes, as far as we know, for the year 1969, with respect, as of the present date at least, with respect to this matter.

Now, let me deal now with the question of the evidence pointing to direct evidence, involving the President with respect to this matter.

First, I would suggest one of the things you might look at is the President's involvement, and I might add that you can find that it was a detailed involvement with the gift of papers which was made in 1968. Now, in 1968, the record is clear that the President met with Lyndon Johnson to discuss the gift of papers. The President received a memorandum with respect to gifts of papers from his attorney, Mr. Ritzel. The President received alternate deeds with respect to making a gift of papers, deeds containing restrictions and some deeds containing no restrictions.

The President examined these deeds. The President had extensive phone conversations with attorneys, Mr. Ritzel, to discuss the deeds, to discuss the memorandum and the President, in effect, in fact, signed the deed with respect to the 1968 papers which amounted, which totaled a value of approximately \$80,000. These are all things that the President did personally with respect to his 1968 gift of papers.

And one question you have to ask yourself, and it is a question for you to answer, is would he make a gift 3 months later of papers worth six times as much, or seven times as much, without doing one or more of these things, and that's something for you to look at.

Now I have dealt with the activities of 1968. Let me touch on some things in 1969 which are in our record.

We know, we know that in 1969 the President in early 1969 received a memorandum from his counsel, at the time, John Ehrlichman, the subject of which was charitable contributions and deductions and that memorandum discussed possible gifts of papers and it said in the memorandum that it was suggested that the President should take a full 30-percent charitable deduction for 1969, one-third of which would be made up by a gift of papers and two-thirds of which would be made up of other charitable contributions, such as contributions resulting from the assignments of writing to particular charities.

We also know that in this memorandum, the President wrote "good" in his own handwriting as well as he made other comments on the memorandum.

Now, this proposal by Mr. Ehrlichman is inconsistent with the President and what he is alleged to have done a month later: namely, to make a gift of papers of \$576,000, which not only eats up his en-



fire 30-percent charitable deduction for 1969, but it eats it up also for the 4 succeeding years, so you can look to that memorandum.

You can also look at a memorandum, and I am talking about how this bears on the knowledge of the President's interest and involvement in his tax matters, there is another memorandum dated June 16, 1969. This is 2 months after the President. 2 months after the President signed his 1968 return, but, of course, it is before the 1969 return has to be signed.

This is a memorandum from John Ehrlichman to Mr. Morgan, and in this memorandum, Ehrlichman really discusses certain Presidential concerns with respect to his tax matters.

In fact, he says things like the President wants to be sure that his business deductions include all allowable items, and then he says the President has in mind—and I am paraphrasing, I am not quoting exact language—that there is some kind of a \$25 limitation on some such expenses.

Now, all I am doing, and also, by the way, there is a discussion in the memorandum of charitable deductions, and it says would you please see, would you please have someone carefully check his salary withholding to see if it takes into account that he will be making a full 30-percent charitable deduction.

Now, why I point to this memorandum, one of the reasons I point to it and one of the reasons that you can consider it, and it is up to you to give it whatever weight you think it is worth, is that it does, you find it shows an interest in his tax matters and an interest in certain very small details with respect to his tax matters.

Now, nothing I am pointing to right now is determinative one way or the other. No one factor can really, you know, be the thing that really requires you to make a judgment. You have to weigh all of the factors, and you have to determine what they all add up to.

Now, the next thing is in 1969, the President receives from his appraiser, Mr. Newman, a preliminary appraisal of his 1969 papers. Now, this was the first appraisal that was made of those papers. This appraisal was made 9 months or maybe 6 or 7 months after the gift is alleged to have been made. Mr. Newman sends this appraisal directly to the President and the appraisal says the papers are worth over \$2 million. That's all the papers that were delivered to the Archives, not merely the portion eventually deeded to the Archives.

The President receives this appraisal, and the President then 1 week later meets with Mr. Newman at a breakfast in the White House and the President remarks to Mr. Newman that he's surprised that the appraisal is so high. This again shows a Presidential attention with respect to some detail, at least respecting his papers and it is something else you can consider.

Now we will go to 1970. In 1970 you have the fact, of course, the President signed his income tax return and you have also the evidence before you contained in our summary of information and also contained in the testimony of Mr. Kalmbach that the President did go over the return page by page, 10 to 15 minutes to be sure, and there is a discussion, a specific discussion with respect to the gift of papers.

And as Mr. Kalmbach testified, and as Mr. St. Clair pointed out to you, that it was agreed by the President and Mr. DeMarco that

this did provide a nice tax shelter for that year and the 4 succeeding years. So you have that.

You have the President's discussion of the gift of papers on April 10, 1970.

Now, there were a number of other circumstances that you should also look to or can also look to with respect to Presidential involvement or lack of involvement in this matter. First, one of the things you should ask yourself, and this is somewhat complicated, and I don't want to really deal with it very long, but nevertheless, it is contained in the Joint Committee report and alluded to in our statement of information.

Is it rational tax planning, is it logical for somebody to give a gift of papers the way the President did in March or April 1969?

Now the Joint Committee notes with respect to this, it says in early 1969—and I am reading from page 53 of the Joint Committee report:

It would have been difficult to make an accurate projection of the President's income for that year as the staff was told had been done, because several issues had not yet been settled, including the tax consequences of the sale of his New York apartment, the sale of his stock in Fisher's Island, Inc. and the distribution resulting from the termination of his interest in a law partnership. Also, the President had certain income from some of his writings which he wanted to assign to charity. From the standpoint of rational tax planning, it would have made more sense to wait toward the end of the year when the President's income from 1969 and his other charitable contributions were known before making a gift of papers to take up the balance of the maximum charitable deduction available. This was the course followed in all of President Johnson's gift of papers and in President Nixon's 1968 gift of papers.

In other words, in all of these other instances, they waited until the end of the year.

Mr. COHEN. Mr. Chairman, could I inquire here?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Nussbaum, as I recall, there were matters being considered by the Congress about that time.

Mr. NUSSBAUM. Yes, sir.

Mr. COHEN. Which might alter the rationality of that tax planning.

Mr. NUSSBAUM. Correct. I was just about to get to that, Congressman Cohen.

It would be rational to make a gift in April 1969 if you know that there is going to be a July 25, 1969 cutoff date. But, the evidence before you is, or so you can find, it is for you to find, is that there was never any discussion, never any thought of the cutoff date or even of the cutting off of a deduction at the time the President is alleged to have made his gift.

The first time that was raised, the first time that was raised was May 27, 1969. The President himself submitted a tax reform bill to Congress on April 21, 1969, but that bill contained no provisions providing for a cutoff of a gift of papers.

Secondly, the first time there was an indication, as I indicated, that there might be an eventual limitation of making gifts of papers was on May 27, 1969, when the House committee issued a press release indicating that it was considering such a cutoff. But, even then, Congressman Cohen, nobody considered what the cutoff date would have been.

Mr. COHEN. Let me just inquire here, did your staff do any research to find out when the dates of the bills were filed to eliminate this particular deduction?

Mr. NUSSBAUM. Yes. They are mentioned in our statement of information, and partly mentioned in your summary of information.

Mr. COHEN. The only other comment I would make, many times once bills get into Congress, and I am sure that this is as well known to the White House as it is to us, the effective date can be attempted to be made retroactive, much as we had in the proposal to go back and eliminate the oil depletion allowance for this year, for example. So, I think there are other countervailing inferences that can be drawn.

Mr. NUSSBAUM. That is correct. But, I think I should state, I think I should state, to be complete about the matter, that the date this gift is alleged to have been made, March 27, 1969, and the date that the bill, or the deed was signed, April 21, 1969, that at that point, there was no public announcement by anybody that anybody was considering eliminating the deduction for the gift of papers.

Now, what you say, if in fact, if in fact there had been such an announcement and then the gift of papers was made, then I think the argument would be a strong one that well, even though there was no discussion of the cutoff date, everybody knows that there is a possibility of a retroactive cutoff date, but at the time the gift was made there was no bill put forth, nobody made any announcement and the President's own tax bill said nothing about a cutoff or a limitation with respect to a gift.

Mr. COHEN. What was the date of the bill?

Mr. NUSSBAUM. The bill was reported out July 25—

Mr. COHEN. When was the bill filed or introduced?

Mr. NUSSBAUM. May 1969.

The House Ways and Means Committee did not announce until May 27, 1969, that it was considering the elimination of the deduction for such gift. It is on July 25, 1969, that the Ways and Means Committee announced that it had decided to recommend this action to the House. The bill was then reported out on August 2, 1969, passed by the House on August 7, 1969.

Mr. COHEN. Do you have any record—

Mr. HUNGATE. What effective date, Mr. Nussbaum, in the House bill?

Mr. McKEITHEN. Congressman, if you are concerned about the filing of the bill, the Joint Committee which serves as counsel to both the House Ways and Means Committee and the Senate Finance Committee in tax matters told us that they had given no consideration whatsoever, and they knew of no consideration being given by any Congressman prior to the appearance on May 22, 1969, of an article in the Wall Street Journal which concerned gifts of papers by certain prominent private as well as public citizens.

At that time, after the appearance of the Wall Street Journal article, they were requested, the Joint Committee staff was requested to do some drafting which might affect this sort of tax deduction.

Mr. HUNGATE. Mr. Chairman?

Mr. Nussbaum, what date was this first House bill to accomplish this purpose introduced? What date was it passed, and what was the effective date on gifts in the House bill?



Mr. NUSSEBAUM. The House, effective date in the House bill—the cutoff date of the House bill, the effective date, the last date a gift of papers could have been made was December 31, 1969.

Mr. HUNGATE. In other words, in the House bill, there was nothing to alarm you about worrying to the end of the year?

Mr. NUSSEBAUM. Correct.

The first bill that was passed, which indicated that perhaps you had to make a gift sometime before December 31, 1969, was the bill passed by the Senate Finance Committee on November 21, 1969, and that bill indicated that the cutoff date would be December 31, 1968. This was the first indication that an individual might not have until the end of 1969 to make a final gift of papers.

The ultimate cutoff date was resolved by a conference in late December 1969 and it made the date July 25, 1969, which was the date that the House Ways and Means Committee first reported out in its bill.

The point is that in March or in April 1970, absolutely no, there was no, or 1969, there was no consideration, no publication, no announcement that there would be an elimination of the gift of papers, and it was after, of course, obviously, and there was no discussion as to the cutoff date.

Mr. HUNGATE. And, Mr. Nussbaum, there was nothing in the House bill, Mr. Nussbaum, that indicated a cutoff date prior to the end of that year, is that correct?

Mr. NUSSEBAUM. That is correct.

Mr. HUNGATE. There was nothing, no bill passed by the House, is that correct?

Mr. NUSSEBAUM. Correct.

Mr. HUNGATE. Mr. Chairman, when did the President have his conversation with President Johnson at which time President Johnson urged him to donate his Vice-Presidential papers, and what relevance does that have in this date?

Mr. NUSSEBAUM. Well, it doesn't have any relevance with respect to this date. The conversation was had in November 1968, late November 1968, after President Nixon was elected President but before he became President, while he was President-elect.

It has no relevance with respect to this date, because at that particular time, nobody ever considered that this gift of papers or this possibility of making gifts of papers would ever be eliminated.

Mr. HOGAN. But at that point, at least he made, at least the tentative decision that he would donate his papers?

Mr. NUSSEBAUM. Yes, he did, and he did donate papers between the conversation with President Johnson and the end of 1968. He donated and he signed a deed and donated \$80,000 worth of papers in late 1968. And as Mr. Doar points out, it is also fair to assume that as a result of his conversation with President Johnson, he would also have made gifts in subsequent years.

I mean nobody claims he only intended to make a one-shot gift of \$80,000 in 1968.

The CHAIRMAN. There was no question raised as to that gift of papers?

Mr. NUSSEBAUM. No.

The CHAIRMAN. In any way whatsoever?

Mr. NUSSEBAUM. Well, actually there is a question raised, but not the same kind of question. There is a tax question raised because that gift,

as the 1969 gift, contained restrictions in the deed, restrictions which caused the Joint Committee to say that it wasn't deductible.

In other words, in order for a gift to be deductible it has to be given free and clear without restrictions. That's a generality, but that's basically so, and there were restrictions, so there was a question raised as to whether or not that gift was properly deductible.

But, it is not the same kind of question that this committee is dealing with with respect to the 1969 gift of papers, which is a more fundamental question as to whether the President knew that he made, whether he knew or didn't know as to whether or not a gift was made prior to July 25, 1969.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. I trust that the gentleman will tell us when the papers were physically delivered to the GSA and when the gift papers were segregated or designated?

Mr. NUSSBAUM. Yes.

The papers were physically delivered to the GSA, and this, of course, is the basis, as Congressman Flowers has pointed out, one of the bases of the President's argument that a gift was made before July 25, 1969, the papers were delivered on March 26 and March 27, 1969.

Now, when I say the papers were delivered I want to be clear, the papers which ultimately were determined to constitute the 1969 gift were part of a much larger group of papers. They were all delivered at once.

Mr. DANIELSON. This is known as courtesy storage, or something like that.

Mr. NUSSBAUM. The record would support such a conclusion by this committee that the papers were delivered at the request of the Archives for the purposes of storage and sorting.

Mr. McCLORY. Could I ask this question?

Are the Archives claiming, or the GSA claiming, the gift of all of the papers or only—

Mr. NUSSBAUM. No, sir, only the ones that were attached to the deed. Only the ones that were ultimately segregated in November 1969 and March 1970 and were included on the schedule of the deed signed on April 10, 1970.

Mr. McCLORY. Do we have any excuse or any reason, I know we don't charge Ralph Newman with making a false affidavit, but it was a false affidavit and well, we sort of just say, well, maybe he made a mistake or something, but what excuse does he give?

Mr. NUSSBAUM. Well, I would say with respect to the first part of your question that this matter we know is under consideration by the Special Prosecutor as to whether or not it was a knowingly, false affidavit which was contained as a part of the President's income tax return, and we are not prepared to comment on that one way or another.

We do know what Mr. Newman's excuse is. Mr. Newman's excuse is that his secretary made up the affidavit, she made it up from certain travel records which indicated that he did look at papers in April 1969. He did look at papers in April 1969. He looked at the 1968

papers which were in a different part of the Archives than the 1969 papers.

And he said that his secretary wrote, erroneously made up the affidavit with respect to the 1969 papers and he examined the papers in 1969.

Mr. McCLORY. Let me add that if there's any implication that he's a very honorable man.

Mr. NUSSBAUM. I will not comment on that one way or the other, Congressman McClory.

Now, I have indicated that this factor of whether or not it was rational or logical to make the gift of papers at the time, the alleged gift was made in 1969, is something for you to look at and weigh.

Finally, other things you can look at and other things you can consider with respect to this issue is, of course, the totality of the President's income tax return. The IRS ultimately disallowed 11 categories of items of either unreported income or improper deductions amounting to \$790,000 approximately.

The Joint Committee stated with respect to the years 1969 through 1972 that there was almost \$1 million in improper deductions and unreported income. Again, this is also just one other factor.

And finally, finally it is important for you to consider what the President's response has been. As you know from the evidence before this committee, the Joint Committee which was requested by the President to look at his tax returns for 1969 through 1972, sent the President questions, asking him questions with respect to the gift of papers and to other tax matters. As of this date, to our knowledge, the President has not responded to those questions.

Now, under these circumstances, you have had testimony, you have had the opinion at least of Mr. Fred Folsom, a consultant to the committee, who for 24 years was an attorney in the Criminal Division of the Justice Department, and the Tax Division and Chief of that section for 12 years, and he stated to you, based on his experience, and I am quoting from his testimony on June 21, 1974 transcript page 1976, he stated in the case of an ordinary taxpayer, on the facts as we know them in this instance, the case would be referred out for presentation to a grand jury for prosecution.

And now again, that is something also for your consideration with respect to this matter. Of course, I don't plan to discuss, although I gather it is a fairly significant issue, but you can read it in our summary of information as to whether or not this conduct, if you find it to have taken place, rises to the status of an impeachable offense. That is something you have to consider.

You have to consider, you know, that the President, of course, is sworn to faithfully execute the laws. You have to consider how important the tax laws are in the scheme of things to this country and how they rely so heavily on the basic honesty of citizens in dealing with the Government. And you have to consider under all of these circumstances if, in fact, the President knew, knew when he signed his tax return on April 10, 1970, if he knew that he did not make a gift of over a half million dollars worth of papers prior to July 25, 1969, if he knew that, and whether that is serious enough to constitute an impeachable offense.

Mr. SEIBERLING. May I ask a question to clarify this point?



The CHAIRMAN. Mr. Seiberling?

Mr. SEIBERLING. That would be a question for a jury if this were a trial, or for the Senate, but we do not ultimately have to decide whether he knew, perhaps depending on your view of the impeachment process. We have to decide whether there is sufficient reason to believe that he knew, and I just want to make that footnote.

Mr. NUSSBAUM. As I said, if reasonable men can believe that he knew.

Ms. HOLTZMAN. Mr. Chairman?

Mr. NUSSBAUM. And I think that's for you to determine, and is what you have to decide.

Ms. HOLTZMAN. Mr. Nussbaum, in connection with the Presidential involvement, it is my understanding—and I may be wrong—that there was intensive lobbying efforts on the part of the White House to get this gift tax disallowance changed. What date did that lobbying effort start, and what implications does it have with respect to Presidential knowledge regarding the date of his return, I mean the gift, alleged gift?

Mr. NUSSBAUM. We have had a preliminary discussion with respect to this matter with members of the staff of the Joint Committee. At the present time there really is no direct proof of the President's involvement in any lobbying with respect to this matter. There were discussions at the end of 1969, not involving the President to our knowledge, but that concerned whether, that concerned the provision which was ultimately adopted preventing future gifts of papers, that there were discussions, we understand, between the members of the staff of the Joint Committee and members of the staff of White House and the administration with respect to this matter.

But the record, the state of the record, and it is not in the record before you, the state of the record before you with respect to that matter is unclear.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. If the gentleman will yield for just one question, Mr. Nussbaum, you have read in the papers and you have maybe had a chance to look at the latest issue of a release from the Senate select committee on the determination by them that they had located \$45,000 in expenditures on Key Biscayne plus some \$4,000, a little over \$4,000 as a partial payment on some jewelry for the President.

This would, of course, if it proves out to be unreported for that year—well, have you done any work on determining whether or not that \$45,000 or almost \$50,000 was, in fact, spent, and if it was spent for the President, and if he did report it on his income tax?

Mr. DOAR, do you have anything?

Mr. DOAR. From the basis of income tax, we believe, or understand, that it was not reported on the President's return. We understand, and I state as a fact, that it was not reported on the President's income tax return.

Whether or not the matters that are contained in the Senate select committee report are established, that is something that we have not yet determined as a fact.

Mr. BROOKS. Have you done any work toward establishing that as a fact or as a nonfact?

Mr. DOAR. We have—the only work that we have done in corroboration with the Senate select committee is gone over their workpapers and their material that they have furnished to us. That is all.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. First of all, can we ask when the information that we had presented to us will be printed or out for the public? We have released domestic surveillance and a whole host of other areas. Can we get at least a timetable as to when the material that you have presented to us and the matters as to the tax, when that will be released? That is the first point.

Do you have a timetable?

Mr. DOAR. I am sorry, but I was supposed to find out at lunch and I did not find out.

It is down at the GPO, or it is in the works.

Mr. MEZVINSKY. I have a couple of other things.

First of all, it is a matter of record that the President said he was going to pay his 1969 taxes, he even repeated it. When we had our presentation to date, it is fair to say that the 1969 tax of about \$140,000, which he voluntarily said he would pay and was delinquent, that has not as yet been paid; is that a fair statement?

Mr. NUSSBAUM. As far as we know, that is true, it has not as yet been paid.

Mr. MEZVINSKY. The other item is a separate item. I just wonder whether the committee looked at a case that was similar to the one we had with the papers, being a musician, Mr. Skitch Henderson, who was just indicted regarding the paper matter and it was not allowed.

Has that all been brought to the attention of the committee, a similar fact situation where he was indicted? Has that been looked into?

Mr. NUSSBAUM. Yes, we are aware of that case.

Mr. Folsom was aware of that case and we discussed that in generalities.

Mr. MEZVINSKY. Thank you.

The CHAIRMAN. Mr. Fish?

Mr. FISH. Thank you, Mr. Chairman.

As I understand it, Mr. Nussbaum, in ticking off the elements of the President's state of mind in signing his 1969 return, we had the Ehrlichman memo, the June memo, the November preliminary appraisal, and then the discussion upon the signing.

Do we know whether the—do we have any evidence that the President was ever told by anyone that a deed was executed in the spring of 1969, maybe by Mr. Morgan, Mr. DeMarco, or any other source?

Mr. NUSSBAUM. We have no such evidence.

Mr. FISH. Did I understand you to say that Mr. Newman, in the spring of 1969, did go to where the papers were and looked at the wrong bunch, looked at the 1968 papers?

Mr. NUSSBAUM. No, he did not look at the wrong bunch—he looked at the 1968 papers. He went there for a reason. He had to appraise them prior to the filing of the 1969 return. But he never looked at the 1969 papers. He now tells us and the office personnel support that conclusion, he never looked at the 1969 papers at that time.

Mr. FISH. And his purpose for going there was to look at the 1968 papers—

Mr. NUSSBAUM. That is correct, for the purpose of looking at them prior to final approval as far as the 1968 papers were concerned, which was determined in 1969.

Mr. FISH. Have you told us everything that you know that the President might have known during that year that bears on this?

Mr. NUSSBAUM. That is a hard question.

For example, I did not mention the fact that the President, of course, signed the tax bill at the end of 1969, the Tax Reform Act. That is another Presidential act. That bill, of course, contained many provisions apart from cutting off the gift of the papers.

Mr. FISH. Going back to the purported discussion in the spring of 1969, we have no instruction from him to Mr. DeMarco through anybody else saying you and Morgan had better get busy on the deed?

Mr. NUSSBAUM. That is correct, there is no such paper.

Mr. FISH. Nothing?

Mr. NUSSBAUM. No.

You should understand, Congressman Fish, that the President on that worked, like in many areas, the President worked through only certain people, a limited few people. In this area, he worked apparently only through one person.

Mr. FISH. Mr. Ehrlichman?

Mr. NUSSBAUM. Ehrlichman.

Mr. FISH. Did Mr. Ehrlichman instruct Mr. Newman or Mr. DeMarco to draw up a deed in the spring of 1969?

Mr. NUSSBAUM. No, there is nothing to indicate that.

Mr. FISH. That is all.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens?

Mr. OWENS. Following up on that that Mr. Fish was getting into, we had a discussion much of this same nature when this was originally presented to the committee. It was my understanding that we were going to try to get Mr. DeMarco, Mr. Morgan, Mr. Newman under oath, no one has ever testified under oath in this matter as to what, if any, instructions they got from any higher, anyone higher up, closer to the President or the President himself. And I had thought that we were going to have that information before we were called upon to vote on this matter. Can we get some of that?

Mr. NUSSBAUM. No.

Mr. OWENS. Can we get some of that from the grand jury or find out where they are on this before—Mr. Doar?

Mr. DOAR. Congressman Owens, Mr. Nussbaum and other members of the staff—Mr. Woods out in California—have interviewed all of these witnesses very thoroughly and very fully.

Mr. OWENS. But not under oath?

Mr. DOAR. Not under oath. However, it was our judgment, Mr. Nussbaum's and mine and Mr. Jenner's, that it would not be productive for us to question these witnesses under oath, especially in view of the fact that there was a grand jury proceeding under way by the Special Prosecutor.

The reason for that is that there was a likelihood that we would not get any different statements from any of the three men than we



got at the time that we interviewed them not under oath, and that, on the other hand, if they were not telling the truth, there was a greater likelihood that it would make it more difficult for the Special Prosecutor to establish the truth.

Mr. SARBANES. Will the gentleman yield?

Mr. OWENS. If I could just follow that up with one question. Then I will be delighted to yield.

Has there been any coordination with the grand jury? Is it proper for us to ask whether they are being questioned under oath?

Mr. DOAR. They are being called in under oath right now.

Mr. OWENS. Have they testified thus far?

Mr. DOAR. My understanding is that some of them, one or more of them have testified. But of course, what they have said is subject to the rules of grand jury secrecy and we would not have access to them.

Mr. OWENS. And there is no way we can find out what they have testified to?

Mr. DOAR. Not right at this time.

Mr. OWENS. Would it be worthwhile for us to now take their oath, take their testimony under oath if they have now testified before the grand jury, and we would not be thereby interfering in the grand jury process?

It just seems to me there are some vital leads here that we really ought to do our best to establish the facts on before we vote.

Mr. SARBANES. Would the gentleman yield?

Mr. OWENS. Yes.

Mr. SARBANES. Isn't it correct that the questions that the Joint Committee propounded to the President, had they been responded to, would have supplied the answers to the things that are left unanswered that Mr. Fish asked about? As I recall those questions—

Mr. NUSSBAUM. Yes.

Mr. SARBANES [continuing]. They in effect went to the sort of points that are being raised and had he responded to those questions, he would have had an opportunity to answer those matters that are up in the air.

Mr. DOAR. That is correct and you remember Mr. Folsom's testimony here that in a case such as this, with these facts, that the first thing that the Justice Department would have done with this case had they had it referred for prosecution under these circumstances, would have been to refer it back for an interview with the taxpayer and that the reason Mr. Folsom expressed his judgment as he did was the fact that the record was that the President had not replied to the inquiries of the Joint Committee.

The CHAIRMAN. Mr. Doar, I understand we have not yet heard from Mr. Cates regarding the matters that I believe are of significance concerning certain phases of the Watergate.

Mr. DOAR. There were two questions that were raised this morning—excuse me, Father.

Mr. DRINAN. Mr. Chairman, I was asking for a question of Mr. Nussbaum.

The CHAIRMAN. Let's defer it, because we will hear from Mr. Cates.

Mr. DRINAN. We will have him back. Thank you.

Mr. DOAR. This morning, Congressman Dennis raised a question with respect to calling Mr. Hunt in and Mr. Hunt's relationship with the President. I would like to ask Mr. Cates to develop that fully for the committee as one of the matters that I think would be of particular interest to the committee in connection with particular issues before it in connection with the Watergate coverup.

The CHAIRMAN. Mr. Cates.

Mr. CATES. Mr. Dennis raised the question of why the President would be concerned about what Hunt would say in mid-April because he could not and would not directly implicate or incriminate the President.

Well, of course, that is simplistic, because we know he would implicate Haldeman and Ehrlichman. But the real concern, the real concern on April 14, as well as on March 27, is that "Hunt will blow", Hunt will talk, and then the White House will come second; the White House will be dragged in. And as you all recall the transcripts, it is Ehrlichman's admonition to get ahead of the curve—in other words, the White House has to appear like the leader. And that is really what the problem they are facing on March 27 is when they learn that Hunt may talk. And it is the same problem they face again on April 14, when they are advised that Hunt will talk.

Colson says, you have 48 hours to move, and basically, it is because of that message that Hunt is going to blow on Monday, the 16th, that the plan which they had formulated on the 27th is implicated on the 14th.

That is the plan to make Mitchell go.

It is that basic reason that Hunt is a matter of concern, because if he goes and the White House comes second, then the White House is not ahead of the curve.

That is the genesis, that is the origin for the Ehrlichman investigation. The Ehrlichman investigation is the alibi, it is the basis for explanation as to why there was this happening on April 14. They are going to try to implicate Mitchell on that date and they have to have a reason as to why or what conduct the President has engaged in to bring that about.

There was a request this morning as to how to analyze the Ehrlichman investigation.

Well, basically, there are three levels of proof that you have to look at. You have to look at how the folks talked about it in the transcripts. What did they say?

In other words, you look at their words and it appears to me that they are fabricating or making up the Ehrlichman investigation between the periods April 14, really, through April 17. All right. Now, that is the first level, to see actually what it is they decided they would say.

The second level of proof is what, in fact, did Ehrlichman do between the date he was supposed to be commissioned, March 30, and the date he was supposed to report on April 14.

That is the second level, just analyzing what he did.

Now, he testified at the Senate select committee that on March 30, he was commissioned to make this investigation and he told us that he was commissioned at the noon hour. We got that tape—it was given by the White House in its April submission—and there is no such discussion.

Then you go from there and you analyze who he spoke to, the circumstances under which he spoke, what information he learned, and what he did with it. The third level of analysis, it seems to me, is to look at the March 27 tape, the transcript that we received. And when you see what was said on March 27, you realize that what happened on April 14 was not something that required any investigative activity, because on March 27, they formulated the plan to have Mitchell go, to implicate Mitchell. And they did not need an Ehrlichman investigation on March 27. They needed an Ehrlichman investigation on April 14, because they had to explain why, what conduct they had engaged in so that when Hunt blew, it would not look like they were behind. They wanted to be the leaders in this.

So that is my explanation of that particular question, Hunt's significance to the President and his significance to the Ehrlichman investigation.

Mr. DOAR. Mr. Chairman, could Mr. Cates go through the money on the 20th and 21st and the 22d of June?

This is the Dahlberg-Ogarrio checks and their relationship to the burglaries.

Mr. CATES. I do not know that it really behooves all of us to bog down in where the money went and how it ended up. The issue, the question that you are facing, is what did the President say on June 23d to Haldeman?

That is the decision that you folks have to make. Did the President tell Haldeman, did he give him instructions to interfere with the FBI's investigation for purposes of hiding the fact that that investigation would uncover Creep money in Mexico? That is really what this is all about.

In that section where it says the response, the President's response, there are 10 or 12 pages from June 17 to July 1. There are four decisions in there.

There is the decision to cover up. The question is was the President involved in that?

There is a decision which, in effect, has the CIA interfering with the FBI. And the question that is before you is was this a conscious decision on the President's part to interfere with the investigation?

Now, in arriving at that decision, you have got to look at facts which, in my judgment, are in this record and have been established beyond question.

One, it is a fact that that was Creep money that would be identified; in other words, if the FBI were permitted to go to see Ogarrio, they would have found the money that he had sent to Creep. So it is a fact that if the investigation were permitted to be pursued, it would find this link.

I think you must examine the significance of that link. You have got to ask yourself, if they found that out, what would really be the complexion of the investigation at that time? There would be an immediate realization that there was a relationship between Creep and the burglaries that would no longer be hidden.

Second, they would have found out that Liddy was involved in this because he was the man who had given the money to Barker, so that Liddy would have been exposed.



And third, as it relates to this Liddy plan and the financing of it, you see, inquiry into the Mexican money leads you into an understanding of how Creep was able to raise cash to finance matters that they did not want traceable.

As Haldeman explains in the transcript in April, the use of cash came to the White House, the \$350,000 fund was for money to spend that was not traceable.

Well, if you are going to spend money that is not traceable, you have to raise it in a way that is not traceable. And so what I am trying to say to you is that that was something that would have been exposed, a method of washing money, laundering money.

Mr. DENNIS. Mr. Cates, a query.

Mr. CATES. Yes.

Mr. DENNIS. Was it not perfectly obvious that there was a Creep connection as soon as McCord was arrested and Hunt's telephone number was found?

Mr. CATES. Mr. Dennis, it was on June 20 that the head of Creep, Mr. Mitchell, he said flat out that there was no Creep relationship, moral, legal, or ethical.

Mr. DENNIS. Well, but they had Mr. McCord.

Mr. CATES. Sir, if a man from General Motors is caught burglarizing, it does not mean General Motors is in it. I think that the context in which the statement was made by Mr. Mitchell, it seemed to me he was telling the world that whatever these men were doing, they were doing for reasons unrelated to Creep.

Mr. DENNIS. I am not disputing that and I am not disputing the fact that tying the money up was a handy thing to do.

The only thing I am suggesting is that whether they tied the money up or not, that CRP was really tied up through the arrest of McCord. So maybe it is not at all necessary to trace that money back to CRP.

I think they could have gone with McCord and Hunt pretty well. But, you know—

Mr. CATES. Well, I guess, Mr. Dennis, as I analyze it, I think all I am really saying is that is a fact—when you are required to decide what were the President's instructions on June 23, logic compels me to look at the things that may have been of consideration to him and that is really what I am purporting to do for you, to explain those things that I think rational men must look at to decide, if they can, what it was that was said on that date.

Another thing that I think is important to know is that both Haldeman and Ehrlichman, before June 23, knew who had gone into the Watergate and why. So they had knowledge of this fact.

I think it is also important to know that there was no CIA involvement in Mexico. As a matter of fact, I think you have to take account of that.

I think you have to take account of the fact that the CIA had furnished support to Howard Hunt. The CIA had given Howard Hunt materials in July and August 1971, which materials were utilized when Howard Hunt made an examination of Clifton De Motte as it related to the Kennedys. They used materials in conjunction with the Ellsberg break-in and they used materials as it related to Dita Beard.

Now, those are facts that occurred and were in existence prior to this conversation.

All right. Then I guess what you have to look at is what happened afterwards.

As Mr. St. Clair said, judge us by our conduct. Well, the fact of the matter is that it is a fair conclusion that, after the conversation, the FBI's investigation was interfered with. That is a matter of fact. It was interfered with.

All right. We also know that the interference with the FBI investigation resulted from a conversation where Haldeman told Helms and Walters in Ehrlichman's presence basically three things: that if the investigation proceeds further, influential people will be exposed.

The second concept is that it was the President's wish to limit the FBI investigation into Mexico because it might uncover CIA activities.

The third statement basically was that the investigation should not go beyond the five.

All right. My feeling is that these basic statements made by Haldeman must be analyzed, and I guess all that we are really concluding is the fact that reasonable men examining all these circumstances and the significance of these circumstances, have a basis to conclude that the President of the United States may well have directed Haldeman to deliver this message to Helms to interfere with the investigation to keep the Creep money from being exposed.

What I am saying is that this conclusion has made it more proper that the only rational, conceivable explanation that would deter someone from coming to that conclusion is going to be found in the transcript or in the tape. We have asked for the taped conversations and the President has not given them.

I guess basically, as I see it, the understanding of the money really is just a set of facts that has to be understood to accomplish a decision on what the President intended to accomplish when he directed Haldeman to speak to Helms.

Mr. DANIELSON. May I inquire?

It ties into Mr. Dennis' question, which, in effect, was, "Could they not go over the report of Hunt?"

As I understand it, Hunt had not yet been identified until about the 5th of July—

Mr. DOAR. That is right.

Mr. DANIELSON [continuing]. As being a part of this operation, is that correct?

Mr. DOAR. Yes; all the investigators had on Hunt was the telephone number in the book, and there was no connection with Hunt in the burglary on the 20th of June.

Mr. DANIELSON. And the thing about do not go further than the five means only the—

Mr. DOAR. Does not mean Hunt or Liddy.

Mr. DENNIS. Well, but if you have Hunt's phone number, I think the FBI can find out his phone number.

Mr. DOAR. Well, they do find out the phone number, but the phone number does not tie him to the burglary.

Mr. DANIELSON. It ties him into a burglar.

Mr. DOAR. It ties him into a burglar, sure, but these fellows are not talking.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Counsel, which one of these phone numbers was the wrong number, anyway? It was in the White House under another name.

Mr. DOAR. There was a number for—Gordon Liddy's phone number was in there under an assumed name, under the name "George."

Then Hunt's number was in one of the phone books.

Then there was this number for a secretary, home number for a secretary, but the phone was in the White House.

Mr. HUNGATE. I am just trying to follow Mr. Dennis' line.

Was the phone number in there really in Hunt's name or someone else's?

The CHAIRMAN. Mr. Davis.

Mr. DAVIS. Hunt's phone number was in his own name, H. Hunt, and it listed both his home phone number and his phone number at the White House. However, in this book that was covered, there were perhaps 50 names and there was no evidence until Baldwin stepped forward, definitely tying Hunt, establishing probable cause or anything like that, to connect him with this crime.

When Baldwin testified on the 5th of July, he was able to identify Hunt as the person who had come into the room at the Howard Johnson's and picked up some of the electronic equipment the night of the break-in.

Mr. DENNIS. Let me ask you this one more question, while we are just kicking this thing back and forth.

Agreeing that a reasonable man might conclude that all this was done on the President's instructions, why could not a reasonable man equally well conclude from the same facts that a high-powered political operator like Haldeman, who was in danger of having everything come down around his ears and did not want the boss to know about it, took it on himself to speak in the boss's name as far as these other people were concerned, without the boss's knowledge?

Is that not almost an equally reasonable assumption?

Mr. SARBANES. Will the gentleman yield?

Mr. DENNIS. Sure, I yield.

Mr. SARBANES. I thought the President made a public statement in which he said that he told Haldeman to talk with the CIA about the dangers of the FBI investigation uncovering their activities.

In other words, the President himself concedes the fact that he talked to Haldeman and gave Haldeman instructions in this matter.

Mr. DENNIS. I think that is correct, but the President, of course, put it on the grounds of possible national security, and so forth and so on. It is conceivable, it seems to me, that he might have actually thought there was something like that. Haldeman might very well know there was not and they go right ahead.

I am not saying that is true, I am just suggesting that there are other possible indications.

Mr. SEIBERLING. Mr. Cates has already pointed out the fact that this was no CIA problem.

Mr. DENNIS. That would not have bothered Haldeman any.

Mr. SEIBERLING. No; but there is some evidence that the President's request had some other basis than the facts.



Mr. DAVIS: The June 30 conversation between the President, Haldeman, and Mitchell shows, I think, that Haldeman is not concealing matters from the President. He tells the President in that conversation that more things may come out on Watergate.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Mr. Doar, I think this is the question that everybody is talking about, and it sounds a little simple, but could I ask you to tell us—this explanation has been very good, I appreciate it, but the beginning of the coverup, the President's involvement—what do you think they were trying to cover up?

Mr. DOAR. I think the explanation that Mr. Dean made on the stand here was as logical as any I have heard.

On the one hand, they were trying to cover up the fact that the CRP had a political intelligence operation that included illegal electronic surveillance with a budget of \$300,000 that had been authorized by John Mitchell, the head of the organization, and also ratified and approved by Mr. Haldeman.

The second thing that they were trying to cover up was the fact that two of the people engaged in this illegal enterprise were Mr. Hunt and Mr. Liddy, both of whom had had prior employment with the White House in illegal covert activities.

The problem came as the coverup continued that you saw the tendency of the Mitchell people to blame everything on the White House people for sending them these two fellows without telling them about the activities that they had engaged in in the past; and you had the White House people blaming Mitchell, not for engaging in the electronic surveillance but for engaging in it in a way which was traceable back to CRP. So those were the two things that they were trying to cover up.

The motive for the coverup was the fact that there was an election in November and that disclosure of these facts would be detrimental to the President's reelection.

Mr. EDWARDS. Mr. Chairman, may I add something to that?

The CHAIRMAN. Mr. Edwards?

Mr. EDWARDS. If they had not covered up, the Plumbers activity would have come to light, because these were plumbers who had put on a disguise, one of whom had a surveillance of Teddy Kennedy, had put on a disguise and had a surveillance of Dita Beard in the *ITT* case, had broken into the Ellsberg and covered that up, and had the wiretaps that had Ellsberg's interception on it hidden at the White House, and the CIA involvement.

All of that had to do with those two men who were involved in—

Mr. DOAR. I did not develop that. That is what I meant, however.

Mr. SEIBERLING. Is it not also true, Mr. Doar, that Mr. Helms informed Haldeman, Ehrlichman, that in fact, the CIA had no problem in Mexico even at this very meeting in which they were trying to talk Helms and Walters into going over to the FBI and telling them to stay away from the Mexican situation. Is that not so?

Mr. DAVIS. Yes.

Mr. SEIBERLING. Mr. Doar, you see, the reason I ask that question is because the President, as I understood it, in June has said that we cannot let this thing spread to the Plumbers, calling it its fancy name,

or the CIA. So the President can't justify his actions on the grounds of not letting national security information out.

Mr. DOAR. That is a question I think you have to decide based upon what was the activities of the Plumbers.

Now, the representation was that the Plumbers' activity was all justified on the basis of national security, yet it now seems from the facts that have come out with respect to the *Ellsberg* case that the activities of the Plumbers were not connected with national security, that the primary motive of the investigation into Ellsberg's background was to create a successful set of circumstances for a successful celebrated case, the prosecution of Daniel Ellsberg.

And there were other activities, known and unknown, perhaps, of Hunt and Libby, that were not connected with national security.

Certainly sending Hunt out to interview Dita Beard with a wig and false glasses and so forth—that had nothing to do with national security. Then there were other activities of Hunt and the fabricated cables that Hunt made up of the alleged involvement of the Kennedy administration and the overthrow of the Diem regime in South Vietnam. That did not have anything to do with national security. Yet, those were activities that these two men and the Plumbers had engaged in.

Mr. FISH. Thank you.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. If the President were seriously—Mr. Doar, is it fair to say, looking at the conversations in April between the President and Mr. Petersen, isn't it fair to say that if the President were concerned about not having the issue of the Plumbers come out, that could have been done in a way similar to the way that he did it in April and not to completely prevent the FBI from trying to find either Mr. Libby or Mr. Hunt?

Is that a factor of his motivation to have to go as far as he did?

The CHAIRMAN. You mean in ordering him not to go further because it was a matter of national security?

Ms. HOLTZMAN. That is right.

Mr. GILL. I think that is right. If it had legitimately been a national security matter, he could have done just what he tried to do in April and say, it is national security, leave it alone. In fact, if you read the March 21 transcript, they did not decide to call it national security until March 21, 1973. So they could not use that method in June 1972, because they did not think it was national security. They had not conceived that defense, according to what the transcript shows.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. There was one matter this morning that I wondered if maybe we could have a discussion about as lawyers, and some of us with prosecutorial background. That is the whole question of the relationship of Mr. Petersen and the President, not with respect to participation or direction or the carrying on of the coverup, but the question of whether or not this was an abuse of power by the President in the way he misused, if you find those to be the facts, the Justice Department and, in effect, his Acting Attorney General.

I think that is a serious matter, depending upon your conclusion as to what were the facts of the case.

Now, I do not see anything wrong with—in fact, I would think it quite highly proper for an Assistant Attorney General or Attorney General to say to his President, generally, what was going on within a grand jury in connection with an important investigation. But I think the question is how did the President use that information?

It seems to me that if the President misuses information furnished to him by his Attorney General that has been developed in the course of a criminal investigation, whether it comes from a grand jury or whether it comes through FBI investigation, that there could be an abuse of the power of the President in that regard. I think that is another way of looking at what the President did and said and did not say and did not do in connection with his dealings with Henry Petersen during the last 15 days in April.

Mr. DENNIS. Of course, I have to point out, Mr. Doar, that Mr. Petersen's testimony here to me did not support any adverse inference on that, but rather, the contrary.

Mr. SEIBERLING. Would the gentleman yield on that?

Mr. DOAR. Well, I think Mr. Petersen—no one gave to Mr. Petersen a hypothetical question in which the question assumed everything that the President knew. And Mr. Petersen was answering a question, in effect, based upon what the President had told him.

I think the question for you is a little more difficult than for Mr. Petersen, because you have got to take into consideration all of those facts that the record here establishes that the President knew as of those dates that he talked to Mr. Petersen.

Mr. HOGAN. Mr. Chairman?

Mr. DENNIS. Well, that is true.

Mr. SEIBERLING. Will the gentleman yield?

Mr. DENNIS. Mr. Petersen, of course, could have been asked such a hypothetical question had anyone wished to do so.

I would have asked him myself if I had thought of it. Sure, I will yield.

Mr. SEIBERLING. I asked Mr. Petersen whether, if he had known the use that the President was going to make of the information he was giving him, and specifically that he was going to give it all to Halderman and Ehrlichman, whether he would have done anything differently, and he said, "Yes, I would have; I would have given him very explicit instructions as to what he could do and not do with that information," which implies that he thought that the President misused the information.

Mr. HOGAN. Mr. Chairman?

Mr. DENNIS. He was very careful not to say that, though, Mr. Seiberling. Maybe you think so—

Mr. SEIBERLING. As I remember, he was being very careful about saying anything against the President.

Mr. RANGEL. Mr. Chairman, we only have 20 minutes to a half hour left.

Mr. HOGAN. I think that the record of the conversations between the President and Mr. Petersen and Mr. Petersen's own testimony indicate clearly that Mr. Petersen was not giving the President confidential grand jury information and that, in fact, Mr. Petersen did not have confidential grand jury information to be passing on. But I do think that the record clearly shows that the President was deceitful with



Mr. Petersen. In fact, he will say in the transcript that I, of course, won't tell anybody about this, I am going to keep it confidential.

And as soon as Petersen walked out the door, he called Haldeman and Ehrlichman in and told them everything Petersen had told him.

The CHAIRMAN. That is right.

Mr. HOGAN. Whether or not that kind of deceit is an impeachable offense is another matter.

But I think also in the transcripts, one can infer that the President himself thought that he was getting confidential grand jury information, because at one point he says, "I know all about that grand jury stuff." Even though he was not, in fact, getting grand jury information, I think there are strong indications that he thought he was and was, in fact, passing that on to other people. So I think we can draw whatever inferences we might from those facts.

The CHAIRMAN. I think one other factor that we ought to take into account with relation to Mr. Petersen and the President is the fact that the President at no time actually really required of Mr. Petersen to the extent that the President, I think, was under an obligation to recall that Mr. Petersen was saying very clearly to the President, Mr. Ehrlichman, and Mr. Haldeman, in my view, are involved in all of this. And yet the President in no way followed that up and what is very significant is the fact that the very next thing we know is that the President turns to Mr. Haldeman and entrusts him with looking into the taped conversations rather than getting his Attorney General, the chief law enforcement officer, whom he said he was relying upon to get this information, and completely avoids this.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. It seems to me that one cannot ignore that.

Mr. COHEN. Mr. Chairman, would you yield for a second?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. A point of clarification that was never quite clear to me is in Henry Petersen's testimony where he says he came into the Oval Office and met with the President and Ehrlichman was with him and he put a report in the briefcase and then took it out.

Would you review that for me as to what that report was in connection with? Was it executive privilege? It was originally stated to be a report—was it the energy crisis or something?

Mr. DAVIS. This was a meeting between Henry Petersen and the President just before the President's April 17 statement.

Peterson testified here that while he was meeting with the President, someone came in with this piece of paper and the President stated it was part of the energy message, and put the piece of paper in a briefcase.

A few moments later, he pulled out a piece of paper. Henry Petersen said he thought it was the same piece of paper; that is what he believed. And the President said this was a portion of a statement that Mr. Ehrlichman had drafted to the subject of immunity.

It was a statement opposing the granting of immunity to high White House aides and Mr. Petersen told the President that he had trouble with that position, that he thought it might be important for him to be able to grant immunity to people.

The President, while not disputing Petersen's ultimate right to make the immunity decision, did urge upon him the problems that it would

present for the President and the President proceeded to make a statement which did express the President's personal opposition to the granting of immunity to White House aides.

Mr. COHEN. As I recall, Mr. Petersen did express to this committee some reluctance on his part in that Mr. Ehrlichman was already then a suspect in the investigation and was partaking of the drafting of an immunity statement.

Mr. SEIBERLING. Mr. Chairman, do I understand that Mr. Cates has finished his presentation or has not?

Mr. DOAR. Mr. Cates had finished the presentation of those two matters or three matters. There is another matter I would like to have Mr. Cates speak to.

Before that, just to correct this, Mr. Cohen, I think, I don't believe that when the President took the paper out of the briefcase, that he said this was the paper that John Ehrlichman had drafted. He said this was a paper that was drafted on immunity. He did not identify the source.

Mr. COHEN. The question that I raise is that Mr. Petersen testified before us that he was suspicious of it because Mr. Ehrlichman was then under suspicion for the involvement and that he thought Mr. Ehrlichman had partaken in the preparation of that statement, as I recall.

I am just looking for clarification.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Before you go on to the next subject, there is a question that has troubled me that has not been fully clarified for me, at least.

The first time the authorities ever became aware of the Fielding break-in was when? After Dean started talking to the prosecutors? Was the coverup successful up until that time?

Mr. DAVIS. That is right. The Department of Justice did not learn of the Fielding break-in until Dean gave them information about it on April 15.

Mr. WALDIE. Now, was it subsequent to that that the affidavit by Ehrlichman was executed, where he said the President approved after the fact of the Fielding break-in?

Mr. DAVIS. That is correct. It was on April 26 that Judge Byrne was informed of this matter and he directed that an investigation be made.

It was in connection with that investigation that Ehrlichman executed the affidavit.

Mr. MANN. One further question before we leave this subject, Mr. Doar.

Do I not recall that during the time that the Petersen-Presidential discussions were going on, during that 10 days or so, that the President conferred with Mr. Haldeman's lawyers during that time on two occasions?

Mr. CATES. Yes, sir.

The President spoke with John Wilson and Mr. Strickler, Haldeman's and Ehrlichman's lawyers. I believe on the 18th of—is it the 19th? On April 19, he told Strickler and Wilson that the reason he put that provision in the April 17 press release regarding immunity was because Dean was running around like a loose cannon. He said he put it in there really to deal with Dean.

Now, Mr. Doar has raised the question of whether or not it is appropriate to consider the President's dealings with Henry Petersen during this period of time as an impeachable offense. I guess the way that it has been discussed so far has been just one-dimensional in the sense that we see the President getting information and then relaying it.

I think if you realize what his motivations are when you read those transcripts and you see why he is trying to get information, then you can attach significance to when he gets it, what he does with it.

For example, I think the most blatant example is Mr. Petersen tells him on April 15 that if Strachan speaks, Haldeman may be implicated, Haldeman may be indicted.

Well, the President of the United States is in an active role on April 14, all day long, trying to get Strachan in a position so that he provides a defense for Haldeman.

Now, these are subtle facts, but the fact is they are there. April 11, Strachan goes to the grand jury and he tells what he has been indicted for. He is accused of perjury. On April 11, he tells a story that defends Haldeman's involvement in the coverup, relates to the payment of \$350,000.

All right, now, at the time Strachan goes on April 11, the President of the United States, Haldeman, and Ehrlichman do not anticipate that this investigation is going to go beyond June 17.

In other words, what I am saying is on the morning of the 14th, when they say Mitchell must go, they are only afraid—their reason for having Mitchell go is that that will cap the well. That is the dynamite in the well and it will stop at June 17.

Now, they know what Strachan is, they know what is happening to Strachan. It is very apparent in the April 14 and 15 conversations. They are well on top of what he said to the grand jury on April 11. When they know Magruder is going to go, they work and try to shake Strachan as Haldeman's defense to what Magruder will say.

So I am saying to you it is not just a matter of getting information and passing it on. On analysis, it is trying to find out what the incriminating proof is and then either reshaping it in some manner consistent with innocence, or getting it out to other people to reshape.

So it seems to me a fair reading of this should not permit you to stop with just, he is getting information and he is feeding it to people. He is an active participant in the shaping and use to which that information he gets is put.

I guess just as an average fellow reading that, I have to think that he is wearing two hats. He is wearing the hat of the President of the United States, which permits Henry Petersen to dutifully give him information; and then he is wearing the hat of the confidant of the suspects, Haldeman and Ehrlichman, to whom he is giving the information and giving advice as to how to use it.

So it is presumptuous. I have not studied the legal situation, but it certainly seems to me that it is worthy of consideration and if you do consider it, you ought to look at the full dimension of the conduct.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Cates, could you find something for us of an objective nature concerning this relationships?



Granted, it is an unusual case, but what would Mr. Petersen do in an ordinary situation if there had been a break-in in a corporation and if there had been some situation where the vice president, let's assume of the corporation were suspected. Are there any rulings of the Attorney General how far the prosecutor can go in collaborating with people, feeding them and sharing with them information in order to break the case? Are there any rules of the Judicial Conference, are there any rules of the U.S. Attorneys that Mr. Petersen may have violated?

I would like to have some objective standards because the interpretation of this relationship, it seems to me, depends upon one's views of the motives of the President. Assuming that the President is innocent and wants to crack this thing, if you put that construction on, then you would say Petersen is doing his job and the President is doing his job. Are there any objective norms by which we could make some evaluation?

Mr. CATES. I guess I would only have to say, sir, that Henry Petersen has expressed the fact that he felt it appropriate to discuss these matters with the highest officer of the land, who he considered his boss.

I have a very difficult time feeling that he did not have the right to discuss this. I would know of no canon of ethics that would bar against that.

Mr. HUNGATE. Would the gentleman yield?

It seems to me that in questioning him, Mr. Petersen indicated that he would do this for a Senator or a Congressman if they had someone on their staff that they ought to get rif of. But when asked how many times he had done it or how many times in a year, he gave no answer.

When asked what the normal lead time on warnings was, he had no answer.

Mr. WALDIE. Would the gentleman yield?

Mr. HUNGATE. Yes.

Mr. WALDIE. He made another distinction which I think is important. He said he would not disclose grand jury testimony; he said he would only disclose ultimate conclusions and he made a distinction——

The CHAIRMAN. That is right.

Mr. WALDIE [continuing]. Between ultimate facts and other facts. It is a distinction I did not understand. But I understood he indicated it would be improper to disclose grand jury evidence to even the President of the United States.

Did you not understand that? Did I misunderstand the evidence in that regard?

What did he make the distinct between ultimate fact on, then? What was all that nonsense?

Mr. RANGEL. He said he thought there would be nothing wrong if in fact he did do that, but he did not do it. But he had indicated he did not find any wrongdoing even in giving the President grand jury information.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Cates, do you think it changed the situation because Mr. Petersen, in effect, was the Attorney General of the United

States in this situation? He was designated as that, he was Acting Attorney General.

If he had in fact been the Attorney General, would the situation have been any different?

Mr. CATES. I looked, really, at it from analyzing the President's conduct and I guess I am not offended by the fact that material was imparted to him. I am offended by, for example, the statements to Henry Petersen that were untrue, the recitation of facts, for example, relating to his conversation with John Dean.

He has a conversation on March 21 with John Dean. He reports this to Henry Petersen in a way that is not true and he reports it to Henry Petersen on April 27 after he has had Haldeman listen to the tape.

So I see a whole pattern of real what I would feel was an interference with Henry Petersen's decision—

Mr. DRINAN. Your real question, though, is not the relationship to Henry Petersen. It is the misuse as you see it by the President of information, however obtained?

Mr. CATES. That is right, sir. That is the way I feel.

Mr. SEIBERLING. If I may—

Ms. HOLTZMAN. Along those lines, I was wondering if you would address yourself to an area not really covered in this summary of information, namely, the obligation of the President to impart to the Attorney General or Acting Attorney General information that he had already received regarding the facts of the coverup and some prior involvement?

Can you comment on that? Because I remember asking Mr. Petersen those questions and I do not see this area analyzed.

Mr. CATES. Well, I see it just in terms of the human conduct. We are really trying to analyze from what went on, what we see, what happened.

I think, I guess I am telling you that I see a lot of evidence that shows a misuse of the highest law enforcement office in the world or in the United States by the President. One manifestation of that is the kind of things we are talking about, getting information, feeding it to the people, using it.

Another thing is not to tell him what you know, not to advise him. I just think it is another dimension of the exact same situation.

We are seeing—it is like when I look at the President with Henry Petersen, I envision myself as a defense lawyer going to the prosecution, trying to learn things, trying to discredit witnesses, trying to build up my own, the people I represent.

I see him performing roles that I perform for a suspect. And I guess in this setting, I think that is a misuse of his power in office.

Mr. DAVIS. I just wanted to come back to what I understood Mr. Petersen's point to be when he was talking to you about whether this was a misuse of the information that he had given the President.

As I understood, reading his testimony, he was saying that it really does not turn on whether he was giving the President information from a grand jury or just general information about the course and direction of the investigation.

He told you that the important question from a legal point of view was the use that the President made of that information. Whether he

used it in a good-faith effort to acquaint people, his aides, with the fact that there were allegations against them, or whether he used it corruptly, with bad motives, to interfere with the investigation and to assist the people under investigation in rebuffing and resisting the investigation instituted against them. That was my understanding of his testimony.

The second point I just wanted to touch on briefly occurred to me when Dick Cates talked about Strachan and the President's activity with respect to Strachan and to April 14, I just wanted to remind the committee that it was on March 13 that John Dean told the President that Strachan knew about the break-in in advance and John Dean told the President on March 13 that Strachan had lied. And he said that it was a matter of personal loyalty for Strachan to lie, that he did not have to be asked to lie; he just did it.

Then on the night of March 21, when the President dictated his recollections of the events of the day, he said that Strachan has been a courageous fellow through all of this and that he had knowledge of the matter.

Then on April 14, in the events that Mr. Cates was discussing, the President says, after hearing the report of what Magruder is going to say about his contracts with Strachan, he tells both Haldeman and Ehrlichman to get with Strachan and to cover these points.

Late that night he talks to Ehrlichman on the telephone at 11:55, and he says, be sure you are going to meet with Strachan, be sure you put him through—I think the phrase is “a little wringer.”

Mr. GILL. There is one other thing along the lines of what Ms. Holtzman asked with reference to Petersen, the dimension of whether the President goes forward and tells Petersen what he knows relates to the issue of the Fielding break-in. You recall Mr. Petersen told him about it on April 18. He presented the Silbert memorandum and said, Mr. President, do you know anything about this or where I can get information?

He answered, no, you stay out of that, that is national security. And he turned it off.

Mr. Petersen said, Mr. President, do you know where I can get information? And the President's answer was, no, I do not.

Of course, the President had been informed about it as far back as March 17 without any dispute by Dean. He told the Acting Attorney General, in essence, that he did not know where there was any information on the subject.

So there is a dimension to the relationship to Petersen that in addition to it as a direct issue, how it relates to the coverup of other activities, whether he is using Petersen as a part of covering up things or conduct related to a coverup.

Mr. DENNIS. Mr. Chairman, I think we have to be careful here to keep in mind what we are doing. The question is whether we have got an impeachable offense.

Now, if you have got a situation on one hand where the President of the United States is deliberately obstructing justice, intentionally leaking information to putative defendants so as to help them to get off the hook, taking active measures to that end and with that intent—as Mr. Davis says, the intent is all important—that is one thing.

Establishing to our individual satisfaction that maybe he did not act



completely as we would like to see a gentleman act in every relationship of life or that he did not tell Henry Petersen everything he knew at some given point in the course of their conversation is something else again.

Let's not get too enthusiastic here. This is a case of circumstantial evidence and circumstantial evidence is all right, but it can be argued both ways and will be, and if you are going to have a case of impeachment that will stand up on circumstantial evidence, you have got first the problem that the prosecution always has. You have the burden of proof.

Second, you have got the problem with the House and the American people that you are talking about the President, and they are not all going to take every intendment against him, you know, even if maybe some of us do.

I just throw that out.

Mr. SEIBERLING. Will the gentleman yield on that?

Mr. DENNIS. Sure.

Mr. SEIBERLING. I wonder if the gentleman recognizes the distinction between the President and just any other gentleman, because it isn't the question of whether it isn't the kind of thing for a gentleman to do, but he is the President of the United States who is in a unique position, who is charged with administering and executing the laws, and yet he is withholding information.

Mr. HUNGATE. Will the gentleman yield?

Mr. Dennis, if the gentleman will yield on that, I don't forget he's different, but I don't necessarily think it's a criminal offense, because he doesn't tell Petersen that he's listened to a tape. Now, maybe he should and maybe he shouldn't. I am talking about whether it is an offense. After all, he is the chief law enforcement officer himself, and he may be deciding whether or not to fire these guys and this and that. And just whether he didn't tell Petersen something at some point in time is not conclusive of anything.

Mr. DRINAN. Mr. Chairman?

Mr. SEIBERLING. The question is whether it is compatible with the constitutional mandate that he faithfully execute the laws, and that's really what we have to decide.

The CHAIRMAN. We are going to have to say all this in 5 more minutes, because I am going to bang the gavel in 5 minutes.

Mr. HUNGATE. Mr. Chairman? Mr. Chairman? I think the gentleman from Indiana makes to some extent the same point that the gentleman from Ohio is making. The President is different, and we must recognize that the inferences will not all be drawn against him. They will be drawn for him in some cases, and for him because he is the President in some cases. It is a real problem.

Mr. DRINAN. Mr. Chairman, I want to hear these people who know so much about this case, and I would like them also to go into the two areas where I think Mr. Doar said they wanted to cover. Did you?

Mr. RANGEL. Mr. Chairman, maybe Mr. Dennis can get some of his Republican colleagues together when we adjourn and we might have an informal briefing to go over some of these more serious questions that we are considering.

Mr. DENNIS. I don't see many of my Republican colleagues here. I am the most enthusiastic man you have got.

Mr. DOAR. We had completed the matters we wanted to cover.

Mr. DRINAN. Well, there are other areas. Have you touched upon every single item in the book?

Mr. DOAR. No.

Mr. DRINAN. I mean in this here?

Mr. DOAR. No.

Mr. DRINAN. Well, I have questions about some of the others, but we can defer them until another time.

Mr. DOAR. Let me say, Mr. Chairman, that any staff members here at the table over the weekend, and Monday and Tuesday next week, are available to meet with the members individually, in small groups, or however the chairman wishes on any particular subject that the members wish.

Mr. FISH. Mr. Chairman, I understand that we are meeting Monday at 2 p.m. for a business session?

The CHAIRMAN. Well, we are going to first meet at 10:30 on Monday morning to hear Mr. Garrison. Mr. Garrison will have his briefing to present at that time, and following that, in the afternoon, we will dispose of the business matters, and some of the matters will relate to procedures that will be adopted, and each of you has, I think, a set of the proposed procedural resolution that we intend to consider and hopefully we may adopt some form of this so that we have very orderly debate and together with that we may have to consider at that time, since it is on the agenda, if the House will have acted on the question as to whether or not to permit live television and that will be a matter that could be appropriately before the committee. Plus the releasing of the other materials, such as the political memoranda which has as yet not been formally released by the committee.

Mr. FISH. Thank you, Mr. Chairman. I was particularly concerned as to—we meet Mr. Garrison on Monday morning, and we all received quite a large brief from Mr. St. Clair late in the afternoon yesterday, and I found today and yesterday with counsel to be extremely helpful and was hoping that at some point prior to Wednesday, following our chance to read Mr. St. Clair's brief, and following Mr. Garrison's presentation, that we would have a chance to come back with the full complement of counsel, perhaps on Tuesday, to have further sessions such as this one.

The CHAIRMAN. You mean as an informal group?

Mr. FISH. Yes, sir.

Mr. MANN. Mr. Chairman?

The CHAIRMAN. Well, I am sure that if it would be helpful, then, fine, we will do so.

Incidentally, it was hoped that rather than this kind of a setup, we could have—and this was a suggestion by Mr. Mann, which unfortunately we couldn't at all implement, but I thought it was a good suggestion—we could have sat around the table and discussed this across the table, but we couldn't get a custodian and the microphone and the table, so we weren't able to implement that kind of a plan.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Mann.

Mr. MANN. Mr. Chairman, we might still, Mr. Fish—

The CHAIRMAN. Mr. Fish, Mr. Mann is—

Mr. MANN. I just wanted to agree with you that I found this very helpful and that perhaps certainly Tuesday as a minimum, we can

continue this sort of thing, and the chairman has suggested, mentioned, if we could put a rectangular set of tables out here with proper audio—and I don't know how we can do that—we might have a very, very useful discussion. We might have a discussion that will actually lead us into a discussion of the multiple articles that we have. Otherwise, I see the more formalized television appearance of this committee as being somewhat chaotic and drawn out and I think that a discussion of the type that we are carrying on here, directed towards the articles that we have, could substantially narrow the issues and keep some rather extreme positions from being brought up, really. And in our formal debate, by eliminating them by consensus earlier—and I think Tuesday is late enough to do that, perhaps even Monday afternoon after our business we can do that, and to some extent do it after our session Monday morning, or Monday.

The CHAIRMAN. Or Monday evening.

Mr. RANGEL. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. In following that up, that we do it without the benefit of a stenographer, that we just get together informally where we can just make our exchanges as lawyers and members rather than abide by the somewhat formal rules of procedure.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Well, that's fine. I think that that can be helpful. Mr. Seiberling.

Mr. SEIBERLING. I just wanted to find out whether we are going to get any presentation of the kind we have just been through with respect to the issues of the impoundment and the secret bombing of Cambodia, which we did cover in the evidentiary presentation?

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. I just want to say if we are not going to go by the rules, I think we ought to all agree to leave all weapons before we come into the session.

Mr. SEIBERLING. Could we have an answer to my question, Mr. Chairman?

The CHAIRMAN. Well, the Chair had not expected that there would be any further presentation other than these informal briefing sessions had developed, and thought that we would highlight these now. I think that you are always free to request further briefings, and I think staff has already indicated that.

Mr. HOGAN. Mr. Chairman, the real reason I sought recognition is a housekeeping suggestion. At the end of each year the House gives us trunks in which to put some of our materials, and if we have any money left over from our budget, I would recommend that provisions be made for extra trunks for members of this committee to take care of all of the materials.

The CHAIRMAN. I am sure that we can make an appropriate request of the Clerk of the House.

Mr. HOGAN. I thank the Chair.

The CHAIRMAN. The committee now stands adjourned.

[Whereupon, at 4:03 p.m., the committee was recessed until Monday, July 22, 1974, at 10:30 a.m.]



# IMPEACHMENT INQUIRY

## Executive Session

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MONDAY, JULY 22, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to recess, at 10:50 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froelich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, special counsel to the minority; Albert E. Jenner, Jr., senior associate special counsel; Richard Cates, senior associate special counsel; Bernard W. Nussbaum, senior associate special counsel; Evan A. Davis, counsel; and Ben A. Wallis, Jr., counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; Alan A. Parker, counsel; Daniel L. Cohen, counsel; William P. Dixon, counsel; Arden B. Schell, assistant counsel; Franklin G. Polk, associate counsel; Thomas E. Mooney, associate counsel; Michael W. Blommer, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel; and Malcolm J. Howard, assistant special counsel.

The CHAIRMAN. Good morning.

As had been previously noted we were scheduled to hear Mr. Garrison and I understand that Mr. Garrison is ready to present his briefing, and as we did in the case of Mr. Doar, the Chair hopes that we would permit Mr. Garrison to go on and to complete his statement before any questions are directed. Mr. Garrison.

MR. GARRISON. Thank you, Mr. Chairman, and ladies and gentlemen of the committee. Good morning.

First, I would like to thank the chairman and the committee for giving me this opportunity to present views relating to the question of the impeachment of the President. I distributed to you a little cartoon that appeared in the newspaper this morning, and I did it for two reasons. One, frankly I think it is funny, but secondly, to the extent that one would take a serious connotation to the concluding frame of that cartoon, I would like to utilize that device to express a contrary view.

As a member of the staff, having sat through just about every ses-

sion of the committee during the course of this inquiry. I would like to associate myself with those who have described these proceedings as eminently responsible, fair and indicative of an effort to establish the truth. To the extent that views have been expressed elsewhere to the contrary, I disassociate myself from those views.

Now, with respect to the presentation of written materials that I had told you last week we hoped to have available today: in fact, for a variety of basically mechanical and administrative problems, which I am sure you can appreciate, given the short time we have had to work on this, we have simply been unable to prepare more than a small portion of those materials for distribution today. During the rest of the week, sections relating to the discussions of the facts and the law in such other areas of the inquiry as time and manpower permit will be distributed to the Members in the belief that so long as the committee is still in the process of deliberating on this matter, it is appropriate to provide views on the facts and the law.

[NOTE.—The material referred to above may be found in a previously published publication entitled "Minority Memorandum on Facts and Law" released by the House Judiciary Committee in July 1974.]

In addition to stating my immense gratitude to the minority staff for their almost super-human efforts these several days, I want to express my appreciation to Mr. Doar's staff for the full cooperation which they have shown in assisting the minority lawyers in preparation of this memorandum. I would like also to say that this is indicative of the spirit of good will and principle which Mr. Doar has exhibited throughout this inquiry.

The subject of my presentation this morning, I think could best be described as the role of politics, with a capital P, in the impeachment process. And by that I mean, ladies and gentlemen, of course not the role of partisan politics, but the role of politics in the sense of government policy—determinations of what is in the public interest.

I would like to discuss the role of politics in the context of several topics. One, the nature of this institution; two, the House of Representatives; three, the nature of the impeachment process; four, the nature of this inquiry and finally the nature of the facts.

As a previous member of the permanent staff of this committee, I have had and do have nothing but the ultimate regard and respect for the House of Representatives as an institution. I was delighted to have the opportunity to come to this committee's staff in December of last year to work on this project.

But, it is important to note that this is a political body in the finest sense of the word. The House of Representatives is designed to function as a representative of people. It is essentially bipartisan, and not nonpartisan, in composition, and I think that any congressional enterprise should reflect the character of the institution.

It has a bearing on the question of the factfinding process here to discuss briefly the nature of the role of the staff in the conduct of this inquiry. And if you will bear with me, I would like to do that for a moment. I think it would be absurd to appear here this morning, in whatever capacity I am appearing, without making any note of the evolution of the staff structure in recent days and weeks. A nonpartisan staff, which is the concept upon which this staff was founded in December and January, is not unprecedented in the history of Congress, but it is certainly atypical. Only where there is an area of inquiry

which requires a great deal of expertise, which is true in the case of the Joint Committee, a modification of the normal congressional system of staffing is deemed appropriate.

But, I would like to make the point again, only because I think it has relevance to the question of the factfinding process, and frankly I am delighted to be able to make the point openly, looking the Members in the eyes, not covertly: in retrospect, I am sorry that the staff was established from the outset as a nonpartisan staff. I think the Members on both sides of the aisle would have been better served if there had been a concept prevailing in the nature of bipartisanship rather than nonpartisanship.

The reason I say that is because, I think, unlike those who have not had the experience of working either with or in a bipartisan staff, I felt, when I worked on this committee staff the first time around, that the degree of mutual trust and cooperation between the minority and majority members of this committee staff was one of the most impressive things that I had experienced in my brief political career. I think that we may have, in an effort to assure the appearance of fairness—and I know this was precisely the motivation, an effort to let the country know that we were all trying to be fair about this matter—simply ignored the benefits to the factfinding process that a recognition of partisan interests that differ would have provided.

The CHAIRMAN. May I interrupt you? And I think it is important that I do interrupt you, Mr. Garrison.

I think that I would be less than fair and candid with this committee if I were not to state that this surprises me that you harbor this kind of an opinion, because if you will recall when Mr. Hutchinson first sent you to see me, and met with me before you were officially hired, I asked whether or not in your view you would take any position other than a nonadvocate, nonpartisan position and I told you then and there that if I thought that you would take an advocate position, I could not, in good conscience, hire you. That was the understanding that I had had with Mr. Hutchinson and you then and there agreed with me that would be the position and the only position that you felt fair to take.

Now, I state that because I believe that it is important that that be on the record.

Mr. GARRISON. I agree entirely, Mr. Chairman, that was exactly what you and I discussed and that is why I used the phrase in my presentation that in retrospect I think it was probably a mistake to have established a staff structure which was based upon an erroneous premise that people don't tend to divide philosophically along very, very general lines. And I am thinking of it functionally, also, in terms of the service provided to the members of the committee.

But the chairman is absolutely correct that the original staff structure was one which I had had a part in creating.

I would point out that the question of partisan representation on the staff, though, does not have to be a matter of fighting and scheming and all of the negative things which the public might associate with partisanship. And I would like to point out, for example, that in the selection of minority staff members for this inquiry, in fact 3 of the 11 minority lawyers that I hired have been or are registered Democrats, which is a somewhat higher ratio, if you want to look at it in



those terms, than the 2 or 3 registered Republicans out of 27 majority lawyers.

Now, my only point is that I have never viewed it as the role of minority staff simply to grind a partisan ax or to be an advocate in its own right. The only advocacy in which any members of the staff are really entitled to engage is that on behalf of their Members, on behalf of their clients, but it is that very advocacy of our clients' viewpoints which I think in the context of this inquiry was unfortunately suppressed, and I think it was done so because of the system and not because of anyone's intention to do so.

Mr. McCLORY. Mr. Chairman, may I make a comment, perhaps relevant to the comment you made and the statement that Mr. Garrison is making now? Because I was a strong supporter of the bipartisan staff, the integrated or bipartisan nature of the staff, and I think that it was, I think it was eminently successful, and I have felt that the staff presentation throughout the entire investigative portion of the inquiry was completely fair and impartial and objective.

The reason I think that we are at this—we are experiencing this sort of shifting staff, or change in status perhaps of staff service, is that at the end of the objective inquiry we come to a point where we have to be decisionmakers and we do have to, we do have to be represented as a Republican and Democratic members of this committee regardless of our views, not that they are diametrically opposed or that they are uniform on one side or the other, which they are not.

And so, I would just like to—well, since the tangent that the gentleman is talking about and so I just think that it is appropriate at this time that this partisan or this minority position be emphasized and be represented.

Mr. FLOWERS. Mr. Chairman, are we going to get to the facts sometime this morning?

The CHAIRMAN. Mr. Garrison, please proceed.

Mr. GARRISON. Thank you. The train of thought I was developing, ladies and gentlemen of the committee, is that, in fact, there were implications for the factfinding process in terms of the way that the staff was organized, and that those were sometimes good, sometimes bad in terms of what Mr. McClory referred to as the bipartisan or nonpartisan staff products. Sometimes a presentation of facts was diluted from what it would have been, the force of them, if the minority were not involved, but the unfairness to both sides was that they were diluted enough to make them not quite pleasing to the majority, but they could never be stated in a manner which was really worthy of the endorsement of the minority.

Now, at this point, therefore, we have arrived at a statement of matters which were not brought to the attention of the committee in the presentation by Mr. Doar last week, and this is to serve the function, as I view it, of one counsel as part of a team of counsels being sure that in the time allowed we have not only one side of the facts to view, but all of the revelant considerations.

And I want to turn now to the role of politics in the impeachment process. The framers considered and rejected placing impeachments and the trial of impeachments in the judicial system. Proposals for having the matter adjudicated by the Supreme Court or in a Special Court of the Nation established only for the purpose of trying

impeachments was fully discussed, and a conscious decision was made that this grave matter of removing an officer of an independent, coordinate branch of the Government would be reserved to the most representative body of the three branches of Government, the Congress. We have therefore, a political body reviewing evidence relating to whether or not political crimes, and I use that word crimes without regard to whether there are statutory offenses involved or not, but reviewing whether political crimes have been committed by a political officer of another branch of Government.

These political considerations relating to the public welfare and policy of the Government are in the impeachment process legal considerations, because it is a political process, political considerations are a part of the law of impeachment.

This concept is expressed at pages 9 and 10 of the introduction which was distributed to you this morning, and the only point that is being made here is that, in our view, impeachable offenses are those for which, under the Constitution, impeachment, and removal by the Senate are legally permissible. It is also our view that there is no impeachable offense for which the sanction of removal is mandatory.

The House in the first instance and the Senate thereafter exercise political judgment which I construe to mean simply balancing the public interest in the premises. The question facing the committee, and thereafter the House, is not simply whether the President did whatever may be alleged. The question is, did the President do it, and if so, what are the implications of that for the Nation in the light of all competing public interests.

In exercising its discretion whether to impeach, the House, and thereafter the Senate, if impeachment occurs, exercises a discretion which, in my judgment, is reviewable only by the people, not by the courts. It is not only permissible, but it is essential to the character of the process, that those political judgments be made.

My own view of the role of the House is that of all of those institutions or roles in other areas of the law to which the House might be analogized, that the role of prudent prosecutor is the most apt. The prudent prosecutor begins his inquiry without bias toward the suspect. He proceeds to gather the evidence from every source, to reach a judgment as to whether the individual should be prosecuted.

I tend to feel that the House of Representatives is really to be considered in the role of prudent prosecutor. The House doesn't simply decide that the President should be impeached, if that is its judgment, and then leave it to someone else to go about accomplishing the removal. The House decides whether it will seek to accomplish the removal by going to the Bar of the Senate, bringing the charge from the House and proceeding to prosecute the case.

It seems to me that when your staff reviews the facts and the law pertinent to this inquiry, what we are really doing is serving as your in-house counsel, assisting you to advise, in turn, the rest of the prosecuting body whether or not, simply, there is a case. And I would suggest that you consider whether there is a case that you can win, in the sense that the evidence is sufficient to warrant a reasonable belief on your part that the outcome of the process will be that which the House seeks when it goes to the Bar of the Senate; namely, removal—a successful prosecution, in other words.

Now, I realize that there can be different views on this. We have prepared a memorandum on the standard of proof, which will be distributed this week as a part of the minority memorandum, and some of the policy considerations which we feel bear upon selecting the appropriate standard of proof are discussed in that memorandum; the analogy to the grand jury and the analogy to the role of the prosecutor.

But, the bottom line, as it is said, of that memorandum, I think, basically is this: that when a member of the committee or a Member of the House votes to impeach, he should do so having made a judgment that the evidence convinces him that the President should be removed from office. Now, some might say, well, isn't that self-evident. Not necessarily. Some feel that you should only determine whether the President might be removed from office on the basis of the facts.

It is our view that the proper test is whether, in voting for impeachment, the member feels the President should be removed from office, that the prosecution should succeed.

The standard of proof does not apply to the law. Standards of proof never apply to the law. One must be convinced as a matter of law that the offense, if proved, is constitutionally a valid charge. One then, we feel, must be convinced in the exercise of his political judgment that the best interests of the Nation warrant removal rather than retention of the officer.

Then comes into play the standard of proof: the sufficiency of the evidence relating solely to the facts—what really happened, what did the officer do—and it is our view that in reaching a decision as to the sufficiency of the evidence that the members of this committee and the House are again in the role of the prudent prosecutor, who looks over the case, and does not engage in a prosecution which will fail, being concerned not simply about embarrassment in a prosecution that fails, but in the way in which an unsuccessful prosecution affects the public interests.

It would be unfair to the President, it would be embarrassing to the House and, for both reasons equally, it would be tragic for the Nation if the committee were to recommend to the House an impeachment in which, when evidence were laid out in a trial-type situation, a fully contested situation, the evidence fell short.

It always seemed to me, frankly, during the inquiry that it was in the interest of the committee equally as much, if not more, than of the President to utilize devices such as cross-examination and every other rigorous test of the evidence, so that in reaching that judgment as to the sufficiency of the evidence, one would have the maximum degree of confidence as to how the evidence would stand up when subjected to an adversary proceeding.

There are certain problems in this evidence which I think, as one of your counsel, I would have to point out to you, just as if I were on your staff, and you were the U.S. Attorney, or the Attorney General, and you were trying to determine whether or not to initiate a prosecution. You would want someone there to be—I will not use the phrase commonly used to describe playing the role of testing the evidence—but someone who will, in fact, point out the soft spots.

One special factor I would like to take note of here is that reliance has been placed heretofore on utilization of so-called adverse infer-



ences against the President in framing the case against the President. I think that that bears much more analysis than I have heard from counsel's table so far in the inquiry. We have set out on pages 3 and 4 of the introduction some of the considerations which we think you should have in mind in assessing what the actual utility of the so-called adverse inferences from nonproduction of subpoenaed material by the President might be if you were in a trial, and were seeking to rely on them in part in proving a case.

I would call your attention particularly to the statement on page 3 of that introduction, in paragraph D, in which is given the rule of law. A jury should not be allowed to draw any inference from circumstantial evidence if that evidence permits two inferences, one as probable as the other.

I would also like to point out in this discussion on pages 5 and 6 that the question of whether an adverse inference actually arises as a result of the President's failure to supply subpoenaed materials is a complicated one. It is not enough to just say, well, we asked for this, we didn't get it, and an adverse inference arises.

Under ordinary rules of law, the question of whether any such inference arises is a function of several factors. First, there is the question of whether a valid privilege of some type pertains to the evidence sought. There, of course, is the question of executive privilege in this case. The members all, I am sure by now, have formulated their own personal views on the force of the committee's arguments on the question of executive privilege vis-a-vis the President.

I would suggest to you that there is at least theoretically another possible privilege that could become applicable in the Senate trial; namely, the privilege against self-incrimination, and I could see that an argument could well be made by the President's counsel that under all of the circumstances, it was not even necessary for the President to claim the privilege, since he was clearly under investigation for offenses which, by definition, in the impeachment process, are crimes, political crimes.

I think you should view the question of impeachment as a process in a very comprehensive way. I view this as a separate track in our legal system in which prosecutions for crimes, within the meaning of the phrase "high crimes and misdemeanors," are instituted and culminated. And I think that if you read the various provisions of the Constitution relating to criminal offenses, you can see that there is at least some room for argument that the fifth amendment privilege could apply to the production by the President of Presidential documents in an impeachment proceeding, because by definition what is being investigated is an impeachable crime.

MR. HUNGATE. Pardon me. Do you mean without claiming it, Mr. Garrison?

MR. GARRISON. I would suggest that increasingly, Congressman Hungate, today attorneys are arguing in courts that the legal requirement of claiming the privilege is itself a prejudice to the defendant; that where reasonably in the circumstances it can be seen that the privilege applies, the person who possesses the privilege ought not to be forced to claim it.

I think there was a thread on that running through the argument by Mr. Mitchell's counsel in this proceeding and I am not at all saying,

Congressman Hungate, that I support that theory. I am only suggesting that in looking at the propriety of the President's refusal to produce subpoenaed documents, I am pointing out an additional argument which possibly could be made. Today's novel theory, of course, is sometimes tomorrow's case law.

Mr. McCLODY. Could I ask a question, Mr. Chairman, for clarification? That is on the subject of executive privilege, which I think we must all recognize, at the same time, don't you feel that this body, as a unit of the House of Representatives, is the forum which must judge whether or not executive privilege is applicable?

Mr. GARRISON. Yes. Yes, I do.

Mr. McCLODY. Thank you.

Mr. GARRISON. But, to complete the answer, in so judging, this body itself must interpret the Constitution.

Mr. McCLODY. Right.

Mr. GARRISON. And that interpretation may require a self-imposed restriction on this body's ability to compel the production of evidence.

Mr. McCLODY. But we can adjudicate that ourselves as the forum for making the determination without going to the courts I mean.

Mr. GARRISON. I would agree, Congressman.

Ms. HOLTZMAN. Mr. Chairman, point of clarification. Mr. Garrison, I am not sure I understand your position. Are you stating that the committee ought to view the President's claim of executive privilege as though it were an assertion of the fifth amendment, so that we cannot draw an adverse inference from his failure to supply to the subpoenas? Is that the position you are advocating?

Mr. GARRISON. Ms. Holtzman, I am not advocating that position; I am presenting for your consideration the possibility that in the context of an impeachment inquiry, the privilege against self-incrimination conceivably might apply to the production of materials which are relevant to the inquiry, just as in an ordinary criminal prosecution it applies to the production of materials relevant to the criminal prosecution.

Ms. HOLTZMAN. I know. But I assume we are not talking about some hypothetical matter that have no relevance to what we are supposed to decide, and so I gather and I——

Mr. GARRISON. That is right.

Ms. HOLTZMAN. I gather what you are suggesting is that the fifth amendment claim has some relevance because we are supposed to judge the President's noncompliance with our subpoenas as though it were a claim of the fifth amendment. Is that correct?

Mr. GARRISON. I am suggesting that this is only a possibility, and I would suggest further, of course, in that in any invocation of the fifth amendment privilege, relevance is necessary for the privilege to be valid, rather than the reverse. Only a relevant document would be one to which the privilege would apply.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Why don't we permit Mr. Garrison to go ahead. He hasn't much time, and I think that in all deference to the fact that he has that little time, that we permit him to make the presentation.

Mr. GARRISON. Thank you, Mr. Chairman.

Mr. DANIELSON. Is that ruling going to apply to everyone, Mr. Chairman?

The CHAIRMAN. Yes; it will.

Mr. GARRISON. Well, I would like to proceed though away from the fifth amendment, which I did not intend to emphasize this much, to a further discussion of the inference question, because I think we would have to agree that that has been one of the more significant aspects of the evidence in this case, the President's failure to produce a number of subpoenaed materials.

The real question, it seems to me, and this is discussed on page 7 of the introduction, in section (b) or paragraph (b) on that page, supposing that there is no valid claim of privilege, and supposing that there is no other legal bar to an inference arising according to the discussion in the introduction, the real question is what is the inference, what is the probative force of the inference?

And I am not sure that it is really helpful to the committee to have that subject brushed over as lightly as I think it has been heretofore: "Well, we have subpoenaed 18 tapes in the milk case. We didn't get any of them. An adverse inference will arise."

Well, an inference can only have content according to context. It can only mean something in relation to what was expected to be produced. Certainly, in the ordinary trial situation, you do not have a general vague inference if you subpoena a letter from the opposite party and you tell the court what the letter relates to, and then the letter is not produced. You don't have just a vague inference against the party. You have a fairly specific inference. The subject matter, as identified by the party requiring production, would have been sufficient as to be adverse on the opposite party's case.

Then, I would suggest, and obviously we don't have time to go on a case-by-case basis because of all of the number of matters subpoenaed by this committee, but I would suggest that in many, if not most, instances, even though I have been consistent throughout this inquiry in supporting the justifications that the staff produced for the materials to be subpoenaed, that the nonproduction of most of the conversations could give rise to an inference, if any, having no more probative value than that there was something in the conversation that the President thought might be somehow damaging to him in some aspect of this inquiry.

And I would suggest that is so because, even though the facts which constituted our justification for issuing the subpoena may have pertained to a particular subject that we thought perhaps was the subject of discussion in the conversation, the reason for the nonproduction may well have been that there was something else in the conversation, whether it was the expletives deleted, at the stage before the transcripts were released or what. I only suggest to you that we have talked about adverse inferences heretofore as if, if this case were to go to the Senate and managers of the House were to begin presenting evidence, they would be able periodically in the presentation of that evidence to reach into a quiver and pull out an arrow of adverse inference for evidence, and I am suggesting, ladies and gentlemen of the committee, that you might reach in the quiver and pull out a bunch of toothpicks and it doesn't matter how many toothpicks you pull out, they won't kill a bear.



Now, turning to the facts of the Watergate situation, it is our view that the essence of the case is whether or not the President, at any time from the 17th of June of 1972 to the present day, did knowingly and with intent, join a criminal conspiracy to obstruct justice in the official investigation of the Watergate burglary of the Democratic National Committee headquarters on June 17, 1972.

It is also our view that the answer to that question, yes or no, is not itself dispositive of the case for the reason I advanced earlier, that in a political process, with a capital "P," in addition to the finding of fact, there is also the rendering of judgment as to whether the facts require removal of the officer.

I recognize that there are theories of law which have respectable support, that it is not essential in deciding the question of removal to first decide that a crime was committed. I would suggest, however, that in the Watergate fact situation, where the President has been named as an unindicted coconspirator by the grand jury for the U.S. District Court in the District of Columbia, and where this committee has great volumes of information on the subject, it would be very difficult to imagine a justification for removal of the President from office arising out of the Watergate fact situation if there is no showing of criminal liability on the facts. The reason I say that is because the standard, the legal test, for involvement in a criminal conspiracy is really one of the—I hesitate to say lower standards—but one of the less difficult matters of fact to prove in the criminal law. We will present to you a memorandum on the law of conspiracy, and essentially that memorandum will say that you should go through the evidence from June 17, 1972, forward to the present day, and you should at each step of the way scrutinize the facts and circumstances that are urged by Mr. Doar to constitute a case of Presidential direction, knowledge, and involvement in the conspiracy. Scrutinize it very closely to see whether, first, knowledge, which is an essential element of the crime of conspiracy, knowledge by the President as to the existence of the conspiracy and the purpose of it is shown.

Second, an intent to participate in it, participate in the sense to further its objectives.

And third, whether the President engaged in some affirmative action to implement that intent. There is no crime in the American jurisprudence which is made out simply by intent.

I would suggest that conduct sufficient to render the President or any other person criminally liable as a conspirator can consist of words, not actions such as moving around and so forth, words or conduct, and, therefore, it is material at every step of the way to examine the President's words to see whether or not they constitute conduct manifesting an intent to participate in a conspiracy whose existence and purpose he knew about. And I would suggest to you in all candor that the presentation Mr. Doar made to you last week, suggesting that there is direct evidence that the President of the United States was involved in directing a criminal conspiracy to obstruct justice from the beginning, is very unconvincing, and I would suggest that you view that evidence as you would if you were a prudent prosecutor who had to go to the bar of the Senate and prove that the President directed the conspiracy from the beginning; not suspect, not "maybe," but prove that he directed the conspiracy from the beginning. I would

suggest to you that at least three U.S. Senators this year have formally stated in remarks on the floor that the standard of proof in the Senate is guilt beyond a reasonable doubt—Senator Ervin, Senator Stennis, and Senator Biden.

I do not know whether the standard of proof in the Senate is proof beyond a reasonable doubt, frankly, and I am not sure that there is a straightforward, clear answer to that, but I would suggest to you as your counsel, that Mr. Doar's case of circumstances showing Presidential involvement from the beginning is a very, very weak one and the reason is because you cannot simply aggregate suspicions. You cannot aggregate inferences upon inferences. You can only aggregate facts to make the case.

As we listened to the presentation last week Mr. Doar started with June 17. He went forward step by step as you must do to see whether at any one moment in time you have evidence, either direct or circumstantial, that the President personally knew of, and intended to take part in, the conspiracy.

How did Mr. Doar start? He said there was a press release issued by Mr. Mitchell and it was false. We had a great deal of examination, it seemed to me hours of examination, during the few days we had for live witnesses about the accuracy of that press release, and I fail to see, ladies and gentlemen, how the accuracy of that press release bears materially upon the issue here, unless one can show, and I did not see it shown, that the President knew of the press release and knew that the facts were false.

Of course, the facts in the press release were false. I did not know that that was ever in issue at this late date. But did the President know that then? Not now, then?

The point was made that the President sat alone in his Oval Office while others met a short distance away, and that is a very dramatic picture that is painted by those words, suggestive that the President was there, consciously wanting not to hear. But the only problem is that that is merely speculation. Do we have any evidence as to why he was alone, what he was reading, what he was doing? Do we have any evidence as to how often many people meet a short distance away and he is not there? Do we have any evidence as to the extent of his knowledge about what was being discussed?

The point is made about the Dean report, that it was fictitious. There was no "Dean investigation," it is said, and yet Mr. Colson told us that everyone in the White House knew that Dean was the staff man in charge, and your statements of information clearly show that John Ehrlichman assigned Dean to find out what was going on, what had happened. I must apologize to the members of the committee most sincerely. I haven't had the time to prepare to give all of the specific tab citations that I would like to, but I think you will recall these items in the evidence. We had several showings that Dean was for all intents and purposes the White House staff man in charge of investigating the Watergate matter, and does it matter at all whether he reported directly to the President in conducting that investigation in determining whether he was conducting an investigation?

Well, of course it doesn't. Is there anyone here who doubts that John Dean was the White House counsel? But apparently he never

dealt with the President directly except in very, very limited ways. So the question of whether Mr. Dean goes in and talks with the President about what he is investigating strikes me as really rather a nonissue.

We have—I direct you to page 195 of the book of “Transcripts of Eight Recorded Presidential Conversations.” That is the transcript of the conversation between the President and Dean on the morning of April 16, 1973, and in that conversation, at the bottom of page 195, the President and Dean are talking about what Dean might tell the investigators, and the President says:

Let me say, on this point I would, uh, not waive. You could say, “I reported to the President”. Uh, that “the President called me in”. I mean, the President has authorized me to say—he called me in and, uh, and, uh, asked me—

Deans says, “Uh huh”.

The PRESIDENT. Uh, make that, that before, that when the event first occurred, you conducted an investigation and passed to the President the message: “No White House personnel”, according to your investigation was involved. You did do that, didn't you?

DEAN. I did that through Ehrlichman and Haldeman.

The PRESIDENT. That's it. You did do that.

DEAN. If I'm under oath, now, I'm going to have to say I did that through Ehrlichman and Haldeman.

The PRESIDENT. No, but I know you did that. I didn't see you.

DEAN. That's right.

Well, so what if he didn't see him? He didn't see him on anything that Dean was doing as White House counsel but that didn't keep him from being White House counsel.

We come to the conversation of September 15, 1972. You will recall that for a period of a year the Nation has been under the impression, as a result of John Dean's testimony before the Senate Select Committee, that on September 15, the President had clearly manifested knowledge of Dean's activities in connection with the actual obstruction of justice. I am not going to go over every line in that transcript. I suggest to you that the first time you read that transcript you must have thought that Dean's characterization of the way in which the President manifested knowledge was at best exaggerated, if not unfounded.

What is it that the President and Dean were talking about on September 15? What were the leaks that the—that Dean had plugged? What services had he performed?

Well, as a matter of fact, there were leaks, actual leaks, you will recall, from the FBI to newspapers. You will recall that Dean was responsible for discussing with Pat Gray the question of those FBI leaks, and he got them stopped because he rode herd on Pat Gray and then Pat Gray rode herd on a few people. They weren't stopped completely, but the leaking was reduced to, we'll say, within tolerable limits.

What else was Dean up to? He was involved in planning the approach of the White House toward the Patman hearings, the proposed Patman hearings, and, of course, they talk about that directly in the conversation on the 15th, and it is at this point that I would like to suggest that once again politics becomes relevant to the consideration of the case but in this instance. I would say politics with a little “p”, equally interesting and enjoyable but not perhaps on quite as high a plane in terms of the national interest.



What period of time are we talking about? We are talking about September of 1972, the most political season of the 4-year period, and what else are we talking about? We are talking about a committee of Congress controlled by an opposition party, about to embark upon hearings into facts which are related to CRP activities, and if you, ladies and gentlemen, were sitting in the White House on that date and were aware that such hearings were about to begin, what would be the principal consideration that you would have if you knew that the party in power in the Congress was the opposite party? I guess it is difficult for most members of the majority to put themselves in that position based on experience, but some of you may recall what it feels like. But I would suggest that the President would instinctively, just as each of you would, think, well, that is going to be a political donnybrook. Here we are, election time.

Now, when a man who has been a political animal for years, all his adult life, reacts in that fashion to a developing investigation by an opposition controlled committee, is he manifesting guilty knowledge?

In our Introduction, we cited you to a proposition. I want to reiterate it. On page 3 of the Introduction in section "d," a jury—and I am thinking now of the Senate when I say jury, because you are the prudent prosecutor or at least, I think, the committee is like the Criminal Division of an Attorney General's office now deciding whether to advise the Attorney General to prosecute. If you are the Criminal Division, I am simply a counsel there, and I am asking you to consider the rule of law that a jury should not be allowed to draw any inference from circumstantial evidence if that evidence permits two inferences, one as probable as the other.

I simply ask you to reread the transcript of September 15, the comments about plugging leaks, fingers in the dike, and read it from the standpoint of a political person in the most political season of the quadrennium assessing and asking himself, what do you suppose the Democratic committee up there on the Hill is going to make out of all of this? I would suggest to you that one doesn't have to have a shred of guilty knowledge of anything relevant to this criminal charge of conspiracy in order to react precisely as the transcript reveals the President to have spoken during that conversation.

I would make the same point with respect to the conversation between the President, John Mitchell, and Haldeman on the 30th of June relative to the question of Mitchell's resignation. I am sure that the members don't need any convincing that there was the personal problem involving Mrs. Mitchell as a factor, and I don't think the members would need any convincing that if the President and Haldeman and Mitchell had any sense at all, they would have to consider what impression would be conveyed to the country when Mitchell stepped down.

I can recall—I guess maybe I wasn't working quite as hard at that time—I think I was out lying around a swimming pool on a Saturday afternoon and I heard the news that John Mitchell had resigned, and the first thing that went through my mind was probably the same thing that went through yours, hmm, must have something to do with the Watergate matter.

Then, of course, the explanation came that it was because of his wife.

The point of the June 30 conversation is I think very clear, that the longer they waited, the more people would get impressed upon them the facts that were coming out in the newspapers through these leaks that Dean was in the process of trying to plug up by riding herd on Gray, and the point would come, if it had not come already, when there wouldn't be any way at all that Mitchell could resign without the entire country knowing and believing that it had something to do with the Watergate problem. So, "cut the loss fast." That is the advice I would have given them, without having one iota of guilty knowledge.

We go through the months looking at those points at which there is evidence of Presidential action which could suggest knowledge and we don't really get to a period which might be cause for genuine concern until the month of March. Before we get into that, though, I simply want to reiterate that I think Doar's case for Presidential involvement and direction starting on the first day after the break-in, is more a hypothetical construct than it is a set of facts proved by the evidence, even circumstantially. It is useful as a basis for analysis of the facts, testing the facts against the hypothesis, but it is in essence simply an hypothesis and not a proved case.

In the month of March the transcripts clearly establish that the President was progressively told by Dean facts which were sufficient to put him on notice that something had been very wrong at the time of the Watergate matter, in terms of the White House relationship to the burglary. There is no question about the fact that on the 13th of March the President had some evidence, on the basis of what Dean told him about Strachan, to believe that at least one person in the White House knew that the DNC wiretapping was going on.

Interestingly, neither Dean nor the President seemed to know whether Haldeman would know about that simply by virtue of Strachan's knowing about it.

Now, think about that. Dean did not know, according to what he said on the 13th of March 1973, whether Haldeman knew about the first break-in and then the wiretapping that went on for a few weeks until the second break-in.

If that is the kind of complicated fact situation that we have here—why, Dean, for heaven's sake, Dean was in the middle of the conspiracy, if anyone was. If anyone had an opportunity to know whether Haldeman knew about the break-in before it occurred, certainly Dean should have. But on the 13th of March 1973, he didn't know, or said he didn't. That was a long time after the break-in. It was a lot of conversations with White House people, a lot of opportunities to learn the ins and outs of what had gone on in February, March, April, May, and June 1972, and none of those conversations, none of the snooping around he was doing for Ehrlichman or for his own purposes had yet given Dean the answer as to whether Haldeman knew.

We come to the events of the 16th of March through the 21st and, of course, there is a tremendous volume of evidence, information, bearing upon all of that. I would offer you a proposition of law which I think is valid, and that is that it is not controlling and perhaps it is not even legally relevant to the President's criminal liability as a coconspirator whether that March 21 payment was ordered by him or not. It might come as a surprise to you that I would say that. The law of conspiracy is that if the President became a coconspirator as of a

certain date, if you find as a fact that he entered the conspiracy because his knowledge was sufficient and his intent was to participate, then he became a coconspirator at the instant that he acted to manifest his intent to participate, whether he did that by words or deeds. So that, and I say this purely hypothetically, if the President on the morning of the 21st of March had said, "Well, John, what you have told me is very interesting, and one thing is clear, I have certainly got to help you fellows cover this thing up," that would simplify our problem in terms of proof, for it would clearly show the President to have become a coconspirator. As of that instant he then would have become criminally liable, and it doesn't matter whether that last payment was ever made—not only when it was made, but whether it was made—because he would have already become a part of criminal conspiracy. He would have ratified the prior acts of his coconspirators and become liable for them.

Now, true, if another substantive offense were to occur subsequent to the time that he entered the conspiracy, he would be separately liable for that substantive offense, and, of course, we know that a payment was made on the 21st of March. I suggest to you that the evidence is very persuasive and there shouldn't be any remaining factual issue as to whether the payment was made on the 21st of March. And that payment, if you believe that it was with an intent to buy silence, would have itself been an obstruction of justice, and if the President had entered the conspiracy prior to that time, he would be then criminally liable for that substantive offense as well as criminally liable for being a conspirator.

Now, does what I have said mean that it is irrelevant to the purposes of the inquiry whether the President ordered and directed that payment to be made? The answer to that is, "No." It is very relevant, factually, and for purposes of the law of impeachment. It is relevant factually because obviously, if one believes that the President ordered the payment to be made and then if one were to further find that his intent in so doing was to obstruct justice, then one would certainly have established involvement in the conspiracy. It is very relevant in terms of that one avenue of proving Presidential involvement if the circumstances that were hypothesized in the indictment in *United States v. Mitchell* were proved to be correct. I think we all know what inferences the grand jury supposed would be drawn and what they appear to have drawn, that the President told Mitchell—excuse me—told Haldeman to have the payment made and that Haldeman then got the word to Mitchell, and Mitchell got the word to LaRue, and LaRue made the payment, and that is all nice and neat and would settle the question of whether the President had performed an overt act, an overt act in the sense of conduct, affirmative action, to join the conspiracy.

But the theory that appears to form the basis of at least that portion of count No. 1 of the Mitchell indictment is absolutely not borne out by the evidence before this committee. All of the evidence that we received from the live witnesses, all of it, tends not only to raise doubt that the sequence of events was that way, but to disprove a sequence of events constituting the conveyance of a direct order from the President to Haldeman to Mitchell to LaRue, and then the payment was made. And that is just the fact of the matter, ladies and gentlemen.



To suggest otherwise would be to insist upon believing something that is not in the evidence. And this committee as a prudent prosecutor simply cannot recommend to the House of Representatives that the House place its enormous prestige behind a prosecution in the Senate founded upon that demonstrably false premise.

It would appear that the final payment to Hunt had been set in motion prior to the time that the President and Dean talked on the morning of March 21, and I think once you come to believe that, then it really doesn't matter so much who talked with whom, at which time of day, or whether it was in the evening or in the morning, or whether it was in person or by telephone, or what have you.

You have to focus your attention on the question, did the President, by his words, by what he said or did in some way associate himself with the conspiracy? not, did he order the payment to be made? because it is clear that he did not do the latter. I would suggest, as an aside—and I hope you forgive me for this—that, frankly, I had never given any credence at all to the allegations that perhaps the political composition of Special Prosecutor's office was such as to be unconsciously prejudicial to the President, until I read the presentment sent to this committee by the grand jury and the evidence sent to this committee in support of some of the allegations in that presentment. There was not one bit of evidence sent to this committee by the Water-gate grand jury that sustained the allegation that LaRue talked with Mitchell in the early afternoon following Dean's first conversation of the day with the President.

MS. HOLTZMAN. Mr. Chairman, I think it is inappropriate for counsel to attack the Special Prosecutor's office as being politically motivated. I am not sure that that is a question before this committee and I would ask to withdraw that statement.

MR. GARRISON. Ms. Holtzman, I would be happy to withdraw any such implication. What I was trying to say is not that they were politically motivated, but I believe people sometimes don't know their own motives.

Now, my point is that maybe LaRue talked with Mitchell in the afternoon. The evidence we had before this committee flatly disproves that, but, hypothetically, maybe he did.

My point is that the evidence that the grand jury sent here didn't have a single word in it to support that, and I ask you to review every single line of it.

Focus then upon the content of the conversation. What did the President say? And there you then have to bring into play those elements of conspiracy, knowledge, and intent. Knowledge has to be full knowledge, knowledge has to be knowledge and not wondering. It has to be knowing, not suspecting.

And I ask you whether you think that the statement of the President's knowledge of the participants, the purposes and the general contours of the conspiracy was in existence as a result of that conversation.

Now, it is easy enough to say, well, of course it was, because Dean told him thus and so. But, who was Dean, and then who was Halde-man? Dean is telling the President a lot of things that obviously need further investigation.

This committee, the Senate Watergate Committee, the Special Prosecutor's office and, it seems, at least 2 million newsmen have spent the better part of a year and a half trying to figure out what happened in the Watergate affair. I would ask you ladies and gentlemen of the committee to consider for a moment whether what the President had been told by Dean on either the 13th or the 21st of March, and even going on through the month of April 1973, formed a sufficient basis for belief as to create in the mind of the President the state that you and I would both agree is called knowledge.

Second, the question of whether the President manifested an intent to participate in the conspiracy, if he knew of its existence. The evidence has to be viewed, according to the case law, as if the President were a person in authority, and the test for manifesting an intent is somewhat relaxed from that applicable to a private individual, and I think a reasonable legal argument can be made for the proposition that in his capacity as Chief Executive and "boss" of the White House staff——

Mr. McCLORY. Mr. Chairman, I note that the second bell has rung, Mr. Garrison, could you estimate how much longer you would require?

Mr. GARRISON. Oh, I think perhaps 15 minutes to cover the Watergate situation, and I would be perfectly at the will of the committee not to cover other matters, if that is your wish.

Mr. McCLORY. Mr. Chairman, I suggest that we either come back at the end of the quorum call or else reconvene at 1:30 for 15 minutes.

The CHAIRMAN. Well, unfortunately, we do have a matter that is of interest to the members of the Judiciary Committee that is on the floor immediately following the quorum call, and the committee is going to reconvene at 2 o'clock for a business meeting. So, we will determine at that time.

Mr. McCLORY. Could we come back at 1:30, I wonder, to hear Mr. Garrison?

The CHAIRMAN. We can do it afterwards. I think it would be better to wait until we have had that meeting.

Mr. McCLORY. That will be an open meeting?

The CHAIRMAN. That's correct.

Mr. McCLORY. OK.

The CHAIRMAN. I am sorry, Mr. Garrison.

Mr. GARRISON. Yes, sir.

The CHAIRMAN. But, we will try to get that time at sometime after 2 o'clock.

Mr. GARRISON. Yes, sir.

[Whereupon, at 12:15 p.m., the meeting was recessed to reconvene subject to the call of the Chair.]





# IMPEACHMENT INQUIRY

## Business Meeting

MONDAY, JULY 22, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 3:03 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, special counsel to the minority; Albert E. Jenner, Jr., senior associate special counsel; Richard Cates, senior associate special counsel; Bernard W. Nussbaum, senior associate special counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; Edward S. Szukeleywicz, counsel; Ben A. Wallis, Jr., counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; William P. Dixon, counsel; Michael W. Blommer, counsel, and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order.

The first order of business will be the consideration of the further release of executive session material, and then following that the consideration of the proposal for authorization for broadcasting committee debate. Should we not complete this business today, this meeting will be recessed until further call of the Chair. And following the recess, we will hear from Mr. Garrison in closed briefing session in order that he may complete his presentation, and following that, there is going to be some time which is to be given to Mr. Jenner who had requested that the time he is to take be deferred until after Mr. Garrison had made his presentation.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I offer a resolution, the text of which is resolved that the committee publish, and upon publication release, the remaining unpublished executive session material presented on and after July 2, 1974, including the statement of information relating to "Political Matters Memoranda," and arguments of counsel.

Mr. McCLODY. Mr. Chairman?

Mr. BROOKS. And copies are before the members.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McCLODY.

Mr. McCLODY. May I inquire relative to this document? I think some of the members may have some question about it, I believe. However, it has been put into print and circulated among the members; is that correct?

Mr. BROOKS. And copies are before the members. And I would say to my distinguished friend that after July 2, that means everything after the initial presentation, which has already been released, and the testimony of witnesses already released, and does include the new material, as new material to be released the political matters memoranda we discussed last week, Mr. St. Clair's response and the briefing that he submitted to the committee, both of which the members have already, and fourth, the arguments, the summary of information of our counsel, and the Ehrlichman notes which have been delivered to this committee. That essentially is the material.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, referring to the political matters memoranda, as I recall that is a thick booklet of several hundred pages, and out of those several hundred pages I am aware of only a half a dozen or so which have been referred to by counsel in the course of their presentation. If I am incorrect in that, Mr. Jenner, you may be able to correct my recollection, but it seems to me that my recollection is that only a small portion of the political memoranda were called to the attention of the committee in the presentation of their case as evidentiary material bearing upon this case. Is my memory correct, Mr. Jenner?

Mr. JENNER. Congressman Wiggins, your memory happens to be correct. I don't know as I would view it as a small portion, but certainly not all of it by any means. But, the staff had in mind that the political matters memoranda have been referred to by the witnesses, Mr. Colson, and others during the course of the proceedings, and that the members of the committee, therefore, would wish to have the political matters memoranda generally in mind to absorb their general character and their flow.

Mr. WIGGINS. Yes. I appreciate, Mr. Chairman, if I am still recognized, the need for the members of the committee to review the full body of the political matters memoranda to determine what portions of them are relevant to our inquiry. But, having made a judgment, the judgment affirmed by the staff in their presentation, that the great body of it, without attempting to quantify it more precisely than that, the great body of it is not relevant to our inquiry.

My concern, Mr. Chairman, is that that irrelevant material labeled political memoranda be released publicly. The concern I have, and I will try to be succinct, is that the power of this House to obtain materials under the impeachment clause is admitted to be sweeping in character, but it would be inappropriate, I think, to compel the production of documents under the power of impeachment, and then to release publicly that material which has been produced, if it is, in fact,

irrelevant to an impeachment inquiry. It permits the kind of public disclosure of information which is private and would not be published but for the impeachment power.

I would suggest to the chairman that the appropriate response to my concern is that only those portions of the political memoranda of Mr. Strachan to which this motion refers, which are included in our evidentiary materials, or to which counsel has referred to in the course of his argument, be released, and that the balance thereof not be released.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. I would agree with Mr. Wiggins. I don't think that we should be publishing a lot of information that doesn't have anything to do with the actual evidence having to do with the various charges that have been made in this impeachment inquiry. I think it is certainly not very fair to provide to the public and to political writers and to members of the other party confidential political matters that really have nothing to do with the subject of our inquiry, and which could be highly prejudicial to third parties.

Mr. WIGGINS. I appreciate the gentleman's comment.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, in addition, of course, to the point that Mr. Wiggins raised, I, during my examination of Mr. Dean, referred to some portions of the political matters memoranda that had not previously been referred to by counsel, and I think that obviously ought to be released. But, I would like to make a broader statement, that I have reviewed, I won't say all of that book, but a substantial portion of it, and I think it is highly relevant to determine the extent to which Mr. Haldeman did have knowledge, and was aware of the matters going on in the campaign to reelect the President. And I would suggest that document is extremely relevant to our decision, and I would support Mr. Brooks' motion in full.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Would the gentleman from Texas yield for an inquiry on another matter? I am assuming that arguments of counsel include the oral argument that the President's counsel made here the other day, Mr. St. Clair's oral argument is included in this?

Mr. BROOKS. That is my understanding.

Mr. DENNIS. That was my understanding, but I wanted to ask you as the author.

Mr. BROOKS. Yes, sir. I certainly included that and expected to.

Mr. SEIBERLING. Mr. Chairman, parliamentary inquiry.

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. I would like to ask the sponsor if it also includes the President's counsel's brief, since it is a part of the record, I assume, and it was filed with the committee. Mr. Brooks?

Mr. BROOKS. Yes it does. I said so originally. I'm sorry.

Mr. SANDMAN. Now, you said that it included the President's counsel's argument.

Mr. BROOKS. Response and brief.



Mr. SANDMAN. OK. OK.

Mr. BROOKS. Certainly they should be made public, and I mean he is willing to make them public, and there is no reason why they shouldn't be. He wants it to be made public.

Mr. SANDMAN. Fine.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. I wonder if the sponsor could tell me whether the definition of material included in this resolution includes the materials that were presented to the committee with respect to the bombing of Cambodia other than those that are classified?

Mr. BROOKS. This material I understand was submitted previously to July 2, and this is not involved in this authorization. This says everything on and after July 2.

Mr. SEIBERLING. Well, Mr. Chairman, I wonder if we could have some clarification as to whether that material is included with any authorization for release that has been previously approved by the committee, the material with respect to the so-called secret bombing of Cambodia?

Mr. BROOKS. Mr. Chairman, I realize that you screened out, you and Mr. Hutchinson screened out, the material that was not to have been released earlier under full committee authorization.

The CHAIRMAN. Well, that was matters that were not relevant nor pertinent to the inquiry. Those were the matters that were screened out.

Mr. SEIBERLING. But I didn't understand that that was included within the purview of what was to be screened out, but that we merely hadn't actually gotten around to authorizing the release of the Cambodian material; is that correct?

The CHAIRMAN. I don't know whether at that time we had made that presentation, but I am sure that in light of the fact that our inquiry went into various areas, and there was information presented, that the matters that related to Cambodia were part of the inquiry, and part of the presentation.

Mr. SEIBERLING. Well, could I ask whether the material on Cambodia is being released the same as the other material, or to the extent that that could be done legally?

The CHAIRMAN. That material would be released that is not classified material. However, other material that is relevant and pertinent to the inquiry that was developed, and which was developed in other executive sessions of other committees, and it has been made a part of the presentation, would be released. That was my understanding.

Mr. SEIBERLING. Could we get some information from staff as to exactly what the status of that is as far as release is concerned, because if it hasn't, isn't going to be, I would like to amend this resolution to make sure that it will be.

Mr. DOAR. Well, Mr. Congressman, with respect to the Cambodian material, you will remember that the classified material was in the first section of that memoranda, and we had prepared a digest of that first section and eliminated all of the classified material. And it was our understanding that that memoranda was ready for public release with the substitute digest that had excluded the classified mate-

rial. And I would assume, it was our intention, subject to the will of the committee, that that would be published together with the impoundment memorandum.

Mr. SEIBERLING. Well, do you require a further authorization of the of the committee to release that material?

Mr. DOAR. No, we do not, because that's just part of the material that was presented to the committee.

Mr. SEIBERLING. Is it going to be made public, and if so, when?

Mr. DOAR. Well, just what the status of that material is. I suppose it is in the process of getting ready for printing or at the printers now. I think it's getting ready for printing, frankly, because we thought this was the will of the committee, we put the testimony of witnesses in ahead of some of the other materials that we hadn't gotten ready for printing yet, and that's the reason for the delay.

Mr. SEIBERLING. Well, I am not quarreling with that. I just want to make sure it is going to be published so that it can be available to the committee and the members for use in the debate on the specific articles of impeachment.

Mr. DOAR. Of course, it is available now for the members.

Mr. SEIBERLING. But not in a usable form for public debate.

Mr. DOAR. Public debate within the committee?

Mr. SEIBERLING. Public debate of the members at a meeting.

Mr. DOAR. We can make arrangements for that because it is easier to Xerox the 300 or 400 copies than it will be to get to the publication.

Mr. SEIBERLING. But it is going to be published sooner or later?

Mr. DOAR. Yes, sir. Yes, sir.

Mr. SEIBERLING. Thank you.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I merely want to ask a question of Mr. Brooks as to whether the arguments of counsel today, Mr. Garrison and next Mr. Jenner would also be included in this resolution? In other words, was this a final and catchall printing resolution?

Mr. BROOKS. It is not, it is not my impression that this is a final and a catchall, but this way we will include all of the material that Mr. Garrison has presented as soon as the transcript is reported, and edited by Mr. Garrison and others that have comments to make during his testimony. And I might ask one other question if the gentleman will yield.

I would ask Mr. Doar about when do you think this material will be available to the members and for release on the Cambodian and impoundment material?

Mr. DOAR. It is usually running 3 or 4 days.

Mr. BROOKS. Thank you.

Mr. CONYERS. Mr. Chairman, would it be in order——

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS [continuing]. To amend, if necessary, Mr. Brooks' motion to include Cambodia and the impoundment material so that they are reproduced along with all of the rest?

The CHAIRMAN. It has been authorized. It is not necessary that it be amended to include it. The only portions of the material that relates to Cambodia and impoundment would be that material that

had been classified material, and that had been so described, but otherwise, that material is part of that evidentiary presentation and has already been authorized by the committee to be released.

Mr. SEIDERLING. If I might make one further comment, Mr. Chairman, while we are on that subject, the only reason why I don't offer an amendment to also release the classified material is because I don't want to precipitate a discussion on what is essentially a side issue. But, I would like to record for the record that I think the classification of that material, long after the event, is unjustified, and the refusal of the Defense Department to declassify it is unjustified. And it is part of the same kind of a pattern that we have been confronted with all through this material of trying to cover that information which can only be justified as remaining classified because some individuals would find it embarrassing to have it made public.

Mr. FLOWERS. Mr. Chairman?

Mr. McCLORY. Would the gentleman yield?

Mr. FLOWERS. Mr. Chairman, I had forgotten what is the issue here today. Could somebody refresh my recollection?

The CHAIRMAN. I yield to the author of the motion.

Mr. FLOWERS. Would the gentleman from Texas please tell me what we have before this committee?

Mr. BROOKS. At this moment, Mr. Flowers, my distinguished friend, the committee has, as you well know, a resolution authorizing the committee to publish, and upon publication release the remaining unpublished executive session material presented on and after July 2, 1974, and including the statement of information relating to political matters memorandums and the arguments of counsel. And since then we have elaborated that it would include the Ehrlichman notes, Mr. St. Clair's response and his brief, and the arguments and the summary of information of our own counsel.

Mr. FLOWERS. That is enough. You are confusing me now, too.

Mr. Chairman, would it be in order to move the previous question?

Mr. WIGGINS. Mr. Chairman?

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. The gentleman has—

Mr. McCLORY. There is an amendment to be offered, Mr. Flowers.

Mr. FLOWERS. Who offered an amendment?

Mr. WIGGINS. I have an amendment if the Chair will recognize me.

The CHAIRMAN. The Chair will have to advise that any amendments to—

Mr. McCLORY. Mr. Chairman, would it be in order to hold this subject until we conclude with our discussion of the TV rules?

Mr. RANGEL. Regular order.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Is there an amendment? If there is an amendment, is there an amendment at the desk for the committee? I don't want to precipitate this, but I would like to at least—well, the previous question has been called for.

The CHAIRMAN. Well, in all deference to the gentleman from California, he had been asking questions regarding these political matters memorandums, and I think we were on the phase though of discussing it rather than recognizing it to be opened for amendment.



Mr. WIGGINS. Am I recognized for the purpose of offering an amendment?

The CHAIRMAN. I recognize the gentleman to continue the discussion of the question.

Mr. WIGGINS. Well, I am prepared to offer an amendment if I am recognized for that purpose. If this is general debate, I will defer until such time as the amendment is appropriately offered.

The CHAIRMAN. I would like to have further clarification, and I think this would certainly serve that purpose before I would recognize the gentleman for purposes of offering an amendment.

Mr. WIGGINS. Would the Chair like for me to explain what I would intend to do if recognized to offer my amendment?

The CHAIRMAN. The Chair would.

Mr. WIGGINS. First let me explain to all of my colleagues here, the only reason an amendment was not prepared well in advance and on your desk is that I received, as you did, the resolution just a few moments ago, and I looked at it for the first time only a few moments ago, and it became necessary to draft an amendment at this table just minutes ago. I had submitted to the chairman a proposed amendment, that if recognized, I will offer. The amendment was intended by me only to insert language, but it came out of the secretary's office and it is in the nature of a substitute. It repeats all of the language in the Brooks resolution, but adds only a few words following the words "political memoranda." It limits the distribution of political memorandums to that memorandum which is included in our statements of information, which has been referred to by witnesses, or which has been referred to by counsel in the course of their arguments.

In other words, all of the political memorandums which have been called to our attention as relevant to our inquiry is proposed by me to be made public, but the balance thereof, which has not been called to our attention, which has not been referred to by witnesses, and which has not been referred to by counsel in argument would not be included within the resolution.

Now, if recognized, I will offer a substitute to accomplish that objective.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. In view of the controversial nature of this part of the record, and since only part of it, as I recall, was testified to, it may be that the balance was included in a package which was received, I guess was received either by the grand jury or the special prosecutor, but since only a part of it was the subject of testimony, and since it could provide damage, at least it could represent irrelevant material, I would suggest that we adopt the amendment, authorize the release of the balance of the material, and defer the subject of the release of this material which might contain some sensitive, derogatory, improper, or irrelevant material.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I would say in all fairness that the counsel and various witnesses have mentioned briefly this document and gone into it. It is not a secret document. May I see it, Mr. Chairman?

The members recall when this came it was sent to all of the members. We have it in our offices. It is a very interesting document showing the pattern of operation during this period of time. The counsel refers to it. I think there is no reason why it should not be included in its entirety. We have not released it, the members have not. But, I am sure that some members of the press, some colleges, some of the people in this country will be interested in taking a look at it. I think if there is anything in it, that members, that Mr. Wiggins, if there is anything that you feel—Mr. Wiggins is not listening, but if there is anything in it that he doesn't like, maybe he ought to specify that, and if there is some little devious scheme in here that ought not to be in the record, maybe we could vote on excluding that.

Mr. HOGAN. Would the gentleman yield?

Mr. WIGGINS I would like to respond, Mr. Chairman.

Mr. DANIELSON. Would the gentleman yield?

Mr. BROOKS. Yes; I yield.

Mr. DANIELSON. Since——

Mr. BROOKS. I will yield to Mr. Wiggins in just a moment, if I still have the floor, because I want him to understand what I feel about this.

Mr. DANIELSON. In other words, you unyield to me?

Mr. BROOKS. No; you go on and finish your business.

Mr. DANIELSON. I received this document Friday, which was distributed to the membership, and I have, during the weekend, looked through it at some length. It is alluded to in the summary of information which was distributed on Thursday or Friday, and frankly, at this stage of the game, I would not be able to distinguish between those portions I have read and those portions I have not read. I think it is an important part of the material presented to the committee, and I would urge that the gentleman's motion be defeated.

Mr. BROOKS. If my distinguished friend from California, Mr. Wiggins, I want to assure him that my thought is rather than strike 95 percent of it, if that refers to 5 percent, for example, if you would point out some part that you think really should be stricken, basically I think we ought to include it all, unless there is some special reason for excluding some portion.

Mr. HOGAN. Would the gentleman yield?

Mr. BROOKS. I will yield to Mr. Wiggins since it was his amendment.

Mr. WIGGINS. I appreciate the gentleman yielding.

I take the position, and I hope my distinguished friend from Texas would not disagree, that all material relevant to our inquiry on which we have relied should be made public. But, those materials which are irrelevant and out of which, on which we have not relied, have no business being disclosed simply because we produced them pursuant to an order.

Now, bear in mind, ladies and gentlemen, that there is no document known as the political memorandum for Mr. Strachan. This is a series of pieces of paper which our committee has compiled into a single document. In fact, they represent a whole series of individual statements made over a period of months. As the chairman knows, I called this matter to his attention by letter last week. This isn't something

that I have recently concocted. I have been concerned about this for some time. I regret, frankly, that the committee has deemed fit to compile this into a single document, but it has done so, unbeknownst to me, and for reasons which I don't know. We should not use our power of subpoena to lay before the public domain that information which is produced thereby, which is irrelevant to our inquiry, and that is precisely what the gentleman's motion, if unamended, will do.

Mr. BROOKS. I thank the gentleman. I would say to the gentleman I would like to ask our counsel what his feeling is about this document.

Mr. WIGGINS. What relevance is that?

Mr. DOAR. It is my position, gentlemen, that this document is relevant to the inquiry in that it shows the course of conduct between Mr. Strachan and Mr. Haldeman with respect to the operation of the Committee To Re-Elect the President. There are 21 separate political matters memorandum in this book between the dates of August 1971 and September 1972. During that time Mr. Strachan wrote over 28 memorandums. Only 21 were delivered to the committee. We have referred I think to five or six of these memorandums specifically, but each of them and all of them taken together demonstrate, not demonstrate, but are proof of a pattern of the relationship between Mr. Haldeman, Mr. Strachan, and the Committee To Re-Elect the President.

Mr. RAILSBACK. Mr. Chairman?

Mr. BROOKS. Mr. Chairman, I would ask—

Mr. HOGAN. Mr. Chairman?

Mr. BROOKS. To let the gentleman have his amendment.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I am wondering if these materials were subjected to the same rules that all of our other evidence has been subjected to? Before you, Mr. Doar, published this, did you submit it to the chairman and the ranking Republican for their perusal to see if it was relevant to our inquiry?

Mr. DOAR. We submitted it—we did not submit it to the chairman and the ranking minority member.

Mr. RAILSBACK. Don't you think that something this sensitive, that in this particular case, that we should have followed exactly the same procedure so that Mr. Hutchinson also would have had a chance to check it to see if there were political sensitive materials that perhaps were not relevant to this particular inquiry? I think, Mr. Chairman, honestly, in this case that this is exactly what we have been trying to avoid all along. We have been trying to avoid, we have been trying to avoid getting into any kind of a fishing expedition, and it looks—I can see if we are going to be using this in our evidence, then those things that are relevant to our evidence should be published along with everything else, so when you are doing this without checking with the ranking Republican, that's why we set up the rules of confidentiality.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. The Chair would like to advise, however, that this has been a matter of discussion as to whether or not it should be printed for the perusal of the members, and the members now have an opportunity to determine whether or not this should be made public.



Mr. RAILSBACK. Well then, let's discuss it, Mr. Chairman, with Mr. Hutchinson and see if Mr. Hutchinson agrees that there are certain relevant or nonrelevant materials in there.

The CHAIRMAN. At this time it is a question for discussion of the committee whether to release or not release, not Mr. Hutchison or I, the chairman. Mr. Mann.

Mr. MANN. Mr. Chairman, I was most impressed by the statement of Ms. Holtzman, and I come to the microphone for the purpose of making the point that Mr. Doar made. You know, if we were in the business of stipulating here we could perhaps do a lot of stipulating about a course of dealing between Mr. Haldeman and the Committee for the Re-Election of the President, or a course of dealing with reference to Mr. Haldeman and the President. The uncertainties that may exist in the mind of some members of the committee, to a large degree, find their basis in the interpretation of the course of the dealings, to what extent is who accountable for what. Now, these 21 political memorandums received from the White House, and happily facetiously I will say that we have been able to rely upon the White House to screen out irrelevant material fairly well up to this point, I believe that the relationships between the President, Mr. Haldeman, Mr. Strachan—a lot of us have formed certain impressions and opinions based on our own peculiar knowledge. We have been around. We have made certain inferences and not supported by this record. Now, these 21 political matters memorandums put into this record a record which, in my opinion, is still deficient on these points, and it is not nearly as historical as a courtroom record would have to be to establish the question of relationships, accountabilities, and agencies and the like, and so I think that in that light this is a highly relevant piece of evidence.

It is a description, as has been said, of the course of dealings which go to the very heart of the responsibility for the problems that we have found.

Mr. DENNIS. Would my friend yield?

Mr. MANN. I yield.

Mr. DENNIS. Is it not true that most of these memorandums, all but two or three of them at least are completely and entirely on subject matter which have nothing to do with the matters to which we are inquiring?

Mr. MANN. I would have expected the other seven that we had requested and not received might have been a little more helpful on that point. But, at the same time—

Mr. DENNIS. Who told you that the ones we have—

Mr. MANN. At the same time, they indicate the awareness and the volume of communications that was going on with reference to these matters in and out of the White House, and I think that is relevant.

The CHAIRMAN. Mr. Garrison, do you want to add something?

Mr. GARRISON. Yes, Mr. Chairman; and members of the committee. I only want to make the observation, I think if the committee does decide to publish the material the committee would want to consider whether in the process of so doing the committee would be supplying support to the President for arguments based upon the fear of disclosure of confidential conversations that were not essential to the impeachment process. My understanding is that the President has

consistently claimed that he has feared an abuse of the subpoena power to disclose private, confidential materials which were not essential to the committee's deliberations, and this could be cited by his counsel as in support that his suspicions were well founded.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. It is my understanding that the President has used that argument in order not to make material available in the first instance. But, it is also my understanding that these materials came from the White House, is that not correct?

Mr. DOAR. That is correct.

The CHAIRMAN. I recognize the gentleman, Mr. Wiggins, for purposes of offering his amendment.

Mr. WIGGINS. Yes, Mr. Chairman. The amendment is at the desk, and I move my amendment as a substitute to the pending resolution. [The amendment of Congressman Wiggins follows:]

#### AMENDMENT BY MR. WIGGINS

*Resolved* that the committee publish, and upon publication release, the remaining unpublished executive session material presented on and after July 2, 1974, including the statement of information relating to "Political Matters Memoranda," which have been submitted to the committee in the statements of information, have been referred to by witnesses or by counsel, and arguments of counsel.

The CHAIRMAN. The question is on the amendment that is offered as a substitute by the gentleman from California to the proposal offered by the gentleman from Texas, Mr. Brooks.

All those in favor of that amendment, please——

Mr. WIGGINS. A member is seeking recognition, Mr. Chairman.

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Mr. Chairman, I am sure the Chair will correct me if I am mistaken in my recollection, but aren't these the materials that at the time they were submitted to the committee this same question was raised, and the chairman assured the members of the committee that anything which was not relevant to the inquiry would not be disseminated, would not be reproduced? My recollection may be faulty——

The CHAIRMAN. No. The gentleman is absolutely correct. I did not say that this was irrelevant.

Mr. MAYNE. And it seems to me——

The CHAIRMAN. Excuse me.

Mr. MAYNE. With reference to some of these juicy tidbits in the presentation, there was a consensus among the members that they did have nothing to do with the inquiry, and that they would not be reproduced. Are we now to assume that the chairman has changed his position on that?

The CHAIRMAN. No, the Chair has not changed his position. When one refers to those juicy tidbits, I think the Chair has, with the ranking minority member, assured that the matters that were not at all relevant and pertinent, and didn't bear on the inquiry, or as counsel has already indicated, providing some kind of information by which we would be able to determine the question of Mr. Haldeman's position, and the relationship of Mr. Haldeman to Mr. Strachan, and this was referred to, this was referred to time and again by our counsel in

his presentation when he did refer to the political matters memoranda for that purpose.

Mr. MAYNE. Well, will not the motion of the gentleman from California make sure that the chairman's position as previously announced will be adhered to? It seems to me that it protects the announcement of the chairman's position and makes sure we do not, by some circuitous side approach, slip this stuff in.

Mr. RAILSBACK. Would the gentleman yield?

Mr. MAYNE. Which the chairman has assured us would not be slipped in.

Mr. RAILSBACK. Would you yield?

Mr. MAYNE. I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, the only thing that bothers me about this is that as I understand it, in every case, regardless of whether a subpoena or a request was made for evidence, and it even went so far that you and the ranking Republican were permitted to determine what would go into a letter of request, there was an equal participation by the ranking Republican. I think you are making a serious mistake if we adjust our rules in this case, because there is not a doubt in my mind but what in this case we have not handled the evidence, something that you want to become evidence, the way it is supposed to be handled.

Now, if Mr. Hutchinson doesn't agree with you, it is my understanding you could at that point come back and let the committee decide. But, in this particular case it seems to me that you have acted unilaterally, you and the staff have acted unilaterally. We have not, Mr. Hutchinson I don't think has approved, and I would hope that you and Mr. Hutchinson at least could get together to determine what may not be relevant to the inquiry.

The CHAIRMAN. As a matter of fact, let me state to the gentleman that there is no unilateral action. As a matter of fact, this is the very reason why the matter is before the entire committee.

Mr. MAYNE. I yield to the gentleman from Indiana.

Mr. DENNIS. I would simply like to observe, Mr. Chairman, and I thank the gentleman for yielding, that if the matter of relevance is to be determined on the basis of some pattern or access or method to communicate, that we can load this record down with anything, we can load it down with love letters, we can load it down with bills of lading, we can load it down with the encyclopedia or anything else that would show that these people would communicate with each other. I thought that you should hold it to something that had to do with the impeachment inquiry. If we don't, we are certainly subject to the challenge on the ground of partisanship, politics and all of these things we have been trying to avoid.

Mr. LOTT. Would the gentleman yield?

The CHAIRMAN. I think I am going to put the question as to whether or not the committee will approve of the amendment which was offered by the gentleman from California.

All those in favor of that amendment, which is a substitute, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]



The CHAIRMAN. The noes appear to have it.

Mr. FROEHLICH. Mr. Chairman, rollcall.

The CHAIRMAN. A call of the roll is demanded and the clerk will call the roll. All those in favor please say aye, all those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordon.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. No.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.

Mr. McCLORY. Aye by proxy.

The CLERK. Mr. McClory?

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATT. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman, 20 members have voted aye, 18 members voted no.

The CHAIRMAN. And the substitute is agreed to. And the vote is now on final passage—

Mr. McCLODY. May I make an inquiry, Mr. Chairman? I just want to understand that the final words here in the argument of counsel mean that it is including the argument of, including counsel would be included in the part to be published? I am sure that's the intent.

The CHAIRMAN. Well, I might ask the gentleman from California to be sure.

Mr. HOGAN. Mr. Chairman, may I direct a question to the author?

The CHAIRMAN. Or the author of the original resolution.

Mr. McCLODY. I yield to the gentleman from California to answer my question. You intended including arguments of counsel, arguments are including counsel, they are to be included?

Mr. WIGGINS. Yes, indeed.

Mr. McCLODY. I thank the gentleman.

Mr. WIGGINS. And it was also my understanding that those materials which have not been released and published pursuant to the resolution remain subject to the rules of confidentiality.

The CHAIRMAN. That is correct.

Mr. HOGAN. Will the gentleman from Illinois yield?

Mr. McCLODY. Yes, I will be happy to yield.

Mr. HOGAN. I would like to direct a question to the original author of the resolution. Does your resolution contemplate the publication of the stenographic transcript of our hearings, briefs, and meetings along with this other material?

Mr. BROOKS. It is not my resolution any more. The substitute was agreed to. You might discuss that with Mr. Wiggins.

Mr. SEIBERLING. Mr. Chairman—

Mr. HOGAN. It is my understanding, Mr. Chairman, then that that material will also be published?

The CHAIRMAN. So long as it is the unpublished material that was developed in executive session and presented after July 2.

Mr. HOGAN. So it will include the transcripts.

The CHAIRMAN. That is the way I read the resolution. Mr. Wiggins.

Mr. WIGGINS. I have no hesitancy in approving the availability of the transcript of these proceedings but before we move too rapidly on publishing the transcript, we ought to have some consideration of the cost of that. We are up to 5,000 pages now of transcript. I again have no reluctance of anybody reading the darn thing but if we are going to publish it in volume we ought to have some notion of what it is going to cost.

The CHAIRMAN. I am unable—the Chair is unable to give any estimate at this time as to cost. That would be something that I am sure we will soon learn about when we inquire about it.

Mr. WIGGINS. Maybe—

Mr. HUNGATE. Parliamentary inquiry, Mr. Chairman. The substitute is now adopted and we would now vote on the resolution as amended by the—

The CHAIRMAN. The resolution as—

Mr. HUNGATE. Now, I want to—

The CHAIRMAN [continuing]. As amended by the substitute.

Mr. HUNGATE. I would like to inquire as to the confidential nature of this. Does this then remain confidential?

The CHAIRMAN. That is correct. The materials that were developed in executive session that won't be released and won't be published will remain confidential.

Mr. SEIBERLING. Mr. Chairman, parliamentary question.

The CHAIRMAN. Let me put the question.

Mr. SEIBERLING. Mr. Chairman, I would like to consider offering an amendment to the substitute so I would hope we could have that open for—

The CHAIRMAN. The amendment or the proposal comes too late. The question is now on the adoption of the motion of the gentleman from Texas as amended by the substitute. All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[Chorus of "noes."]

The CHAIRMAN. The ayes appear to have it and the motion is adopted as amended by the substitute.

Mr. SEIBERLING. Mr. Chairman, parliamentary inquiry. Do I understand now if any member wishes during the course of debate coming this week to refer to the book on "Political Matters Memorandum" that we are not able to do so even in debate in this committee, even though we think it might be relevant?

Mr. WIGGINS. We are talking about two different issues. One is the publication of these issues and the second is the committee's record.

Mr. SEIBERLING. But the chairman has ruled that the rules of confidentiality apply as to everything in that book except to the extent that they are covered by this amended resolution.



The CHAIRMAN. Well, the Chair would like to state that when the proposal that we are considering finally comes to a stage where we debate the issues and make recommendations to the floor, that of necessity the House then becomes the Committee of the Whole and questions are no longer confidential since they are not confidential to the House. Members of the House are entitled to review or see any material that is in our custody because the material that is in the custody of the committee is really in the custody of the House.

Mr. SEIBERLING. Mr. Chairman, my question relates to whether or not in the course of this week's debate in this committee the members can refer to matters in the "Political Matters Memorandum" book even though they have not been covered by this publication authorization.

The CHAIRMAN. It appears to me that the rules of confidentiality will pertain to matters other than those matters that are covered within the resolution.

Mr. SEIBERLING. Well, it seems to me we have just hamstrung ourselves in that respect.

Mr. DANIELSON. Point of information, Mr. Chairman. During debate, the amendment which we have adopted says that—it refers to the matters which have been referred to by witnesses or by counsel and arguments of counsel. During our debate I looked through one little section of the summaries of information and find that the political matters memorandums were referred to six times on two pages and in rather general terms. I have a question in my mind as to what extent I am going to be permitted to refer to that because this has been referred to by counsel.

The CHAIRMAN. The matters that have been referred to by counsel as I would understand this resolution would be, of course.

Mr. DANIELSON. Well, then, I submit that nearly every—the whole volume has been—practically the whole volume—

Mr. DOAR. No. I think, Congressman Danielson, that eight of the political memorandums have been referred to. Eight. That is my fast count.

Mr. DANIELSON. I accept the count. Thank you.

The CHAIRMAN. The matter that is now before the committee is the consideration of the proposal which would authorize broadcasting of committee debates through live television.

I recognize the gentleman from Utah.

Mr. OWENS. Mr. Chairman, I have a resolution at the desk I ask the clerk to read.

The CLERK [reading]:

*Resolved*, That the committee authorize the coverage by television broadcast, radio broadcast, still photography, or by any of such methods of coverage the committee debate and consideration of a resolution of impeachment, together with articles of impeachment, impeaching Richard M. Nixon, President of the United States. Such coverage shall be in accord with the rules of the House and the rules of procedure of the committee as amended on November 13, 1973.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. The resolution is being passed out to the members. I think the membership—most of them were already treated to a 5-minute talk in a speech by me today on this subject on the floor, so I will pass over that, except to say—make a couple of points.

I think that it is now particularly relevant that the House has given us the authority to permit televising of our meetings. I think it is now particularly relevant in the course of this impeachment proceeding that we make this—that we take advantage of this opportunity to educate the public in what has gone on in the impeachment inquiry and upon our final deliberations.

The evidence, with the one exception that we just now made, has all been made public that has come before us for our consideration and I submit that the TV, the television, radio, is the best media to present in the—to the extent that it has not already been presented in other media—the impact that that evidence has had upon the committee. The television is a direct circuit between the committee, will be a direct circuit between the committee and the viewer and will afford, I think, an unparalleled education, given where we are at this time in our proceeding, to the American public and will allow the public in essence to examine the committee and its members and our logic and the coolheadedness and the intelligence with which we approach this task.

Television is a very critical eye and in that sense considered by some perhaps to be dangerous in this emotionally charged proceeding but I think that the public's right to know and I think the carefulness and the judiciousness with which the committee has approached the task combine in essence to make television wise at this stage and I think that it would behoove us today to permit the public in for our final debate and the voting on the articles of impeachment.

Mr. SEIBERLING. Would the gentleman yield?

Mr. OWENS. Yes. I yield to the gentleman.

Mr. SEIBERLING. I would like to commend the gentleman for the initiative he has taken in bringing this to the point where we are able to make this decision. I would like to ask a point of clarification and that is that is it the gentleman's understanding of his proposed resolution that by adopting it, we are not committing ourselves to permit the use of floodlights if the committee desires not to use floodlights. In other words, we still might be permitted to insist that the television media use the ambient lighting in the room.

Mr. OWENS. Well, I suppose we would be committing ourselves to permitting such lights, lighting, as is required in order to permit our pictures to go out on the——

Mr. SEIBERLING. If that is the case, I offer an amendment to the proposed resolution.

Mr. OWENS. Well——

Mr. SEIBERLING. I did not understand that was the significance.

Mr. OWENS. Maybe I am missing the gentleman's point. Such lighting as is required in order to permit the telecasting would, of course—would be considered as having been within the terms of this resolution.

Mr. SEIBERLING. Then I would like to ask the Chair——

Mr. OWENS. I don't know the technicalities, I will say to the gentleman from Ohio, on whether you can televise without lights.

Mr. HUNGATE. Would the gentleman yield?

Mr. SEIBERLING. If the gentleman will yield further, I went into this in some detail with the television media when they were televising our earlier proceedings and the technicalities are that they can use the ambient lighting in the room but they can't get good color television,

so it might end up in black and white instead of color. But that is the only inhibition on using the ambient lighting.

Mr. DENNIS. Will the gentleman yield?

Mr. OWENS. Yes, I yield to the gentleman from Indiana.

Mr. DENNIS. I am no technician but I point out to the members that the lights we are going to have are right up there. They are going to be shining in our eyes. Of course, there is going to be color television. There is nothing to stop it in this resolution. And in addition, we are going to have still photographers around here firing off flashbulbs every 2 or 3 seconds. That is provided for in this resolution.

Personally I can live with the resolution. I think in many respects the point of view which I, generally speaking, am supposed to represent around here probably would do as well on the television as any other point of view if not a little bit better, but not because of me. I didn't mean it that way. But no court in the land, I would like to point out, has ever allowed it and this is a very serious judicial proceeding, the most so, I suppose, and I just wonder how far we want to go along the circus trail.

I believe in having the public here and the press here but I am very doubtful whether this is conducive to a judicious—judicial performance.

Mr. HUNGATE. Would the gentleman from Utah yield further?

The CHAIRMAN. The time of the gentleman has expired. I recognize Mr. McClory.

Mr. McCLOREY. Thank you, Mr. Chairman. I yield to the gentleman from Missouri if he wants to ask another question.

Mr. HUNGATE. I thank the gentleman for yielding. I would like to ask the gentleman from Utah, now, I suppose that in the debate which we will conduct that the material we have just made confidential will still remain confidential and that would mean that if failing to compartmentalize my mind, if I read this material and adhering to the thesis that I can't tell anyone on this committee what is relevant to them in this investigation, and having read 121 pages of this and finding it exruciatingly relevant. I find I may have difficulty supporting this because it may inhibit debate.

Mr. McCLOREY. Mr. Chairman, I don't want to respond to the gentleman's question or yield further at this time in that respect. The gentleman is restricted under the amended—the substitute resolution that was adopted, but he will not have any difficulty in questioning witnesses with regard to any material about which questions were asked in the course of our executive session or any matters that were included in our books or under any tab or any statement of information. So the restriction won't be too serious, I don't think. I do——

Mr. HUNGATE. If the gentleman——

Mr. McCLOREY. I would like to make a little statement in support of the resolution now because I want to join in commending the gentleman from Utah and state it was my amendment that the committee adopted unanimously here at the outset to the effect we would have live television of all of our opening hearings, so what we are doing here is entirely consistent with the original action that we took. I expect that the debates that we are going to conduct will provide an opportunity for us to delineate the relevant evidence and for us to make appropriate arguments relative to the constitutional and legal issues



that are involved and provide a balanced and an informative program for the American public and—

Mr. WIGGINS. Would the gentleman yield?

Mr. McCLORY. In just a minute. And we will not be restricting this to the writing press but we will let the video and television have the same right as the writing press in this instance.

Now, I did have in mind and I do have in mind that we are about to adopt a resolution with respect to the conduct of our debate so that it will be fair and equal to all members of the committee with respect to the presentation of our debate material. I had hoped that we might be able to include in our rule some requirement that the TV media would provide continuous uninterrupted coverage which might be long and drawn out but at the same time would assure fairness insofar as our proceeding is concerned. I am not going to offer such an amendment to our rule because I don't want to tie our hands or their hands in that respect, but I do want to admonish the TV media and our chairman who will be conducting this proceeding that, as far as possible, we provide continuous uninterrupted coverage.

Now, the rules do provide that we shall not have commercial sponsorship and I hope that we will—and, of course, that will include no commercial—no interruptions for commercials and I am also hopeful that we will not have interruptions for editorializing, at least to the extent that it might exclude some member who was making a very important debate. And so in that respect, I hope that we will be able to follow the rules of fairness. I think it will contribute to our having further informative sessions of this type in the future, can be very illuminating, very helpful, and I am confident, too, that this committee will conduct itself with dignity and with respect and that we can avoid these criticisms of hamming it up or of those other ones that are directed toward those who suggest that this is going to be some kind of a circus. It can be a dignified and a very responsible presentation and I would hope and expect that that is what it will be.

Mr. Chairman, if the gentleman from Missouri still wants me to yield—

Mr. HUNGATE. No, thank you. I thank the gentleman.

Mr. McCLORY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman.

This is not a novel question before us. There has existed over the years contention between first amendment rights which are public rights and the private fifth and sixth amendment rights of individuals and this contention has been exasperated with the advent of the television as a form of reporting public events. That question, which is a most important one, has been resolved for us historically against the televising of proceedings where the purpose of those proceedings is the ascertainment of proof. The relevant consideration has always been that if there must be some yielding between the first and the fifth and sixth amendments that it is better to come down on the side of private rights guaranteed under the fifth and sixth amendments.

It is difficult for me to not be persuaded by that long history. I realize, we all realize, this is a matter of great public interest but it is the very fact that it is a trial or at least an adjudication of great public interest that we ought to be particularly scrupulous.

That being the case, I would urge my colleagues to consider the wisdom of the pending resolution. I have done so and personally I believe that the pursuit of truth is going to best be served by not having television in these chambers.

Mr. SEIBERLING. Mr. Chairman, I have an amendment at the desk I would like to offer.

The CHAIRMAN. We are just discussing—we are recognizing members merely for the purpose of discussing motion at this time.

Mr. DANIELSON. Mr. Chairman, may I be recognized?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. On the concept of whether or not the TV coverage, if any, should be continuous, uninterrupted, I would like respectfully to point out that we are, as my brother from California said, talking about the first amendment, but it cuts both ways. We can't restrict the press. When the printed press people come in here they do not, thank goodness, print every word that we say and I would like respectfully to submit that probably the television people also exercise good judgment and would cull out the very—some of the material that is not necessary for the public's understanding of what is going on here. And even if we were to pass a resolution saying that they should make this continuous and uninterrupted, I respectfully submit that we are infringing their rights under the first amendment to report news. I guess it is news that we are talking about.

I think that an action on our part to do this would be practically as arrogant as having some other body tell us how to run this impeachment inquiry and I, therefore, urge that we put no restriction on the—we either restrict television entirely or we let them do it the way that professional television wishes to have it done.

Mr. SANDMAN. Will the gentleman yield?

Mr. DANIELSON. I yield.

Mr. SANDMAN. I would like to ask my friend from California—are you listening?

Mr. DANIELSON. I yield to whomever it is.

Mr. SANDMAN. Yes. I would like to ask you a question about what you just said. You don't want to infringe upon the first amendment rights of the press and neither do I. But a simple question. Is it right for the TV cameras to close off when a gentleman such as your friend from California on our side is making his presentation?

Mr. DANIELSON. Well, it has been my experience, I might respond to my friend from New Jersey, that he doesn't get closed over on very often. Just from past experience.

Mr. SANDMAN. Wouldn't it be—

Mr. DANIELSON. I would rely on the good judgment of the people on the TV media. All these people are mature. They are experienced. They are professional. And no matter what results, I yield to their good judgment.

Mr. SANDMAN. If you will yield further.

Mr. DANIELSON. I yield to Mr. Edwards.

Mr. EDWARDS. I thank you for yielding.

A few weeks ago I probably would not have voted for this resolution but I am going to support it because I think it is important in that all of the evidence has already been released or is in the process of being released. All of the evidence that has to do—that we have heard and that we have been exposed to as the committee, and with the exception,

of course, of some of this information that we didn't release today which has never been a part of our evidentiary discussions. But in addition to that, this whole impeachment inquiry is so huge that I think it needs putting together in a rational way by the 38 members of the committee and I think that having the coverage, and I do hope that it is on an almost continual basis, it will help to do that. It is an entire picture of a course of behavior and I think that we will be able to put the evidence together on one side or the other for the American people now that the evidence has been released.

Mr. DANIELSON. I appreciate the gentleman's addition to my argument but my position is simply this. I predict that the big surprise on the TV coverage is going to be how much of it is going to be dull, boring and uninteresting, and neither the TV people nor the public nor any of us are going to want to have it shown and I would hope that we don't compel them to show an awful lot of debate which may be tremendously interesting from a legal point of view but very dull so far as where public consumption is concerned. I am hoping, in other words, that some of it be left out.

The CHAIRMAN. The Chair would like——

Mr. DANIELSON. I yield back.

The CHAIRMAN. The Chair would like to state before we go to the floor to vote, and then return immediately after the vote, that during the course of the debate on this question on the floor, I was asked whether or not there had been any understanding on the part of the Chair and the television broadcasters as to how this would be handled. I regret to state that I have no understanding and I am unable to impart to the committee just how this is going to be handled. I might state that I do know that the members would expect that the television networks, who I know will be fair in every respect, will attempt to show this continually because unless this were done, I think that it would not impart for the public the kind of picture that the public needs to know if indeed this is the argument made by those who support this amendment. And I would hope that we bear this in mind and I know that following this vote, should this be adopted, I do intend to take this matter up with the television networks regarding the method in which they intend to handle this.

Now we will recess until we have voted on this amendment.

[A recess was taken.]

The CHAIRMAN. The committee will come to order. At the time we recessed, the matter before us was the proposal of the gentleman from Utah and is there any further discussion on the——

Mr. SEIBERLING. The amendment stands, Mr. Chairman?

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Chairman, I reluctantly must vote against the presence of the electronic media in these proceedings and I voted that way before on the floor. I am somewhat apprehensive that the entire House voted on this question just 2 days before the impeachment inquiry began and the impeachment proceeding, therefore, would be the first meeting of any body of Congress, of the House, that would in fact have live television and radio.

Obviously, the questions here are momentous and of enormous solemn importance and I feel uneasy, frankly, that this would be the first inquiry to be televised in this way.



If the resolution on the floor earlier today had been prospectively for live radio and television after this inquiry or for the next Congress, I would vote for it enthusiastically, I think that it is a good thing. But in the situation that we find ourselves, we don't have the ordinary type of congressional meeting. We have at least a quasi-judicial proceeding. I want complete due process to be given to everybody involved. I want this quasi-adjudication to be completely impartial and objective and I am afraid that it might be less than that or could be less than that if it were the first meeting of the committee in the history of the Congress, the entire Congress, to be televised.

I, therefore, Mr. Chairman, with a good deal of reluctance and misgivings, indicate that, along with four or five others of the committee, I must vote no on this measure.

The CHAIRMAN. The gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, I have an amendment at the desk. I wonder—

The CHAIRMAN. Is the amendment—will the clerk report the amendment?

The CLERK [reading]:

Amendment by Mr. Seiberling.

"Strike the period after 1973, insert a comma and add the following:

"Provided that nothing herein shall be construed as authorizing the use of supplemental lighting."

Mr. SEIBERLING. May I be heard on the amendment?

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. SEIBERLING. Mr. Chairman, I voted for the resolution before the House today and I think it is an important step forward, not just for these proceedings but for the House, to allow the electronic media to be present and, therefore, allow the public to be present in our proceeding. I reject the argument that the courts do not allow this in judicial proceedings for the simple reason that the courts do allow it. There are courts all over this country that allow photographs, including television, to be present at the trial of cases, criminal cases. But they also require that the televising and photography be done in such a way that it is unobtrusive and does not interfere with the conduct of the proceeding.

Now, that is a far cry from allowing cameras and lights and the full panoply that is required for color television.

I was advised when I went into this with the media representatives a couple of months ago that it is quite possible to get high quality television without any extra lights, provided that it is black and white photography. The only thing is that as a matter of policy they like to use color and it just seems to me that we ought to at least put that kind of restriction. The tail should not wag the dog.

This proceeding is not being conducted for the benefit of the media but in order to carry out a very grave constitutional responsibility and I think that whatever we do with respect to the media should not be done in such a way that it hampers our proceedings. We have already experienced what happens when the lights go on. In the first place, it is very hard on the eyes.

Mr. McCLORY. Will the gentleman yield?

Mr. SEIBERLING. I will in just a minute. In the second place, the temperature in the room goes up about 10° and to ask us to sit here

hour after hour under those conditions is to impair our work. That is the reason I am offering my resolution. I yield to the gentleman from Illinois.

Mr. McCLORY. The Chairman——

Mr. SEIBERLING. I yield to the Chairman.

Mr. McCLORY [continuing]. Wants you to yield to him, I guess.

The CHAIRMAN. Does the gentleman recognize that his amendment would in effect be a restriction on the rules of the House which provide for certain floodlights, spotlights, strobe lights, flash guns, shall not be used in providing any method of coverage of the hearing except that the television media may install additional lighting in the hearing room without cost to the Government in order to raise the ambient lighting level in the hearing room to the lowest level necessary to provide adequate television coverage of the hearing at the then current state of the art of television coverage? Does the gentleman recognize that in effect what the gentleman is suggesting is that we now restrict the rules of the House for this committee?

Mr. SEIBERLING. Mr. Chairman, my amendment does not restrict the rules of the House in any way. It merely provides that this resolution shall not be construed as authorizing the use of supplemental lighting.

Now, if they can make out a case that it is authorized under the rules of the House, why, that is up to them. But the burden is then on them and I am advised that it is possible to give quite adequate coverage under the present state of the art as far as black and white television is concerned.

Mr. DRINAN. Would the gentleman——

Mr. McCLORY. Would the gentleman yield to me now? I thank the gentleman for yielding and I want to point out that in rule 33(f) it says, "The written rules which may be adopted by a committee under paragraph (e) of this clause shall contain provisions to the following effect."

It is mandatory that we adopt provisions such as the chairman has indicated which would prohibit floodlights, spotlights, strobe lights and flashlights which are prohibited but does say that we—that the television media may have these additional lights.

Mr. SARBANES. Would the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Maryland.

Mr. SARBANES. Just on that very narrow point, the committee must vote in an affirmative way to permit the television at all at these hearings. It seems clear to me that the committee can impose a condition upon it if it chooses to do so. The rules of the House do not compel us to have the television. I do not believe that the rules of the House precluded the propriety of the amendment offered by the gentleman from Ohio if we choose to adopt it in terms of governing our proceedings.

Mr. McCLORY. I just pointed out——

Mr. EILBERG. Would the gentleman from Ohio yield? Mr. Seiberling?

Mr. SEIBERLING. I yield the time.

Mr. EILBERG. During the last recess or break while we went over to the floor to vote, I had occasion to check with the CBS experts around here and they say that without supplemental lighting they can't even do black and white and that they simply must have the supplemental

lighting and this is the expression of the experts that we have from CBS.

Mr. SEIBERLING. What experts were they? I might say that a delegation representing all the media called on me in my office about 2 months ago and we had a very lengthy discussion. They said they discussed it with their engineers and they could do black and white television. They did not like to do it. Their home offices didn't want to. But——

Mr. EILBERG. Did CBS contact you?

Mr. SEIBERLING. They represented all three networks.

Mr. EILBERG. CBS told us today——

Mr. OWENS. Will the gentleman yield for an ABC——

Mr. SEIBERLING. Let the media come in under the ordinary rules and demonstrate what they absolutely need and not have this resolution in effect make the decision for them.

Mr. OWENS. Mr. Chairman?

Mr. SEIBERLING. Yes; I yield.

Mr. OWENS. I called on the expertness of one of those tails out there trying to wag the dog of the committee which I think is not a kind name for the gentleman to apply to our committee, but I spoke with Mr. Sam Donaldson just very briefly who assured me that if we do not allow additional lighting—is this a dog call, Mr. Chairman—if we do not permit additional lighting, in effect we will not have television coverage, that this decision is one which will—which will be up or down on whether we have it or not, that the television people have phased out their old black and white equipment and simply cannot televise it.

Mr. Francis O'Brien, for a third opinion, who is administrative assistant to the chairman, informed me that he had talked with technical experts and there was the same response. So it looks to me that this amendment, if we pass it, will be an amendment against the televising of these hearings.

Mr. SEIBERLING. Well, my experience with engineers is that when they don't want to do something they can give you a thousand technical reasons why they can't do it, but when you finally tell them to do it they always suddenly find that they can do it, and sometimes they even say they are glad you forced them to do it because they found a better way.

The CHAIRMAN. The time of the gentleman has expired.

Might I inquire of the gentleman from Ohio what purpose his amendment really is going to serve?

Mr. SEIBERLING. Well, the purpose, Mr. Chairman, is that we are not going to sit here and sweat and try to proceed in the face of blinding light while we are carrying on some extremely grave deliberations for the future of this country. I want the public to see what we are doing, but not at the cost of impairing our results.

Mr. CONYERS. I call for the previous question. Mr. Chairman, if it is in order I would like to call the previous question.

The CHAIRMAN. The Chair merely wanted to ask, gentleman, if the offer of the amendment would not at least consider whether or not the television networks and their experts might not be able to accommodate him or accommodate the committee without imposing this



supplemental lighting he talks about, and be able to reach the same result?

Mr. SEIBERLING. I am sure they could accommodate us, Mr. Chairman, and this amendment will put them in the position where they will.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio. All those in favor of the adoption of the amendment, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes have it.

Mr. SEIBERLING. Rollcall, Mr. Chairman.

The CHAIRMAN. A call of the roll is demanded and the clerk will call the roll. All those in favor please say aye, all those opposed, no.

Mr. RANGEL. Mr. Chairman, don't you need a certain number of people to have a rollcall?

The CHAIRMAN. I don't think that there hasn't been that certain number of people since we have been demanding rollcalls. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

[No response.]

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. DENNIS. Aye by proxy.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. FROEHLICH. No by proxy.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. Aye.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. No.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. No.  
 The CLERK. Mr. Latta.  
 [No response.]  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. No.  
 Mr. KASTENMEIER. Mr. Chairman?  
 The CHAIRMAN. Mr. Kastenmeier.  
 Mr. KASTENMEIER. I wish to be recorded as no.  
 The CHAIRMAN. The clerk will kindly report Mr. Kastenmeier. Has  
 the clerk reported Mr. Kastenmeier voting no?  
 The CLERK. Mr. Kastenmeier is recorded as voting no.  
 Mr. Chairman, 8 members have voted aye, 29 members have voted  
 no.  
 The CHAIRMAN. And the amendment is not agreed to.  
 Mr. McCLORY. Mr. Chairman, I move the previous question.

The CHAIRMAN. The question occurs on the motion offered by the gentleman from Utah. All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it and——

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. The motion is agreed to.

Mr. DENNIS. Get a rollcall on that.

The CHAIRMAN. The clerk will call the roll. All those in favor of the motion please signify by saying aye. All those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. Aye.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. Aye.

The CLERK. Mr. Hutchinson.

Mr. DENNIS. No by proxy.



The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. No.

The CLERK. Mr. Dennis.

Mr. DENNIS. No.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye. Before the clerk records the results, Mr. Sarbanes.

Mr. SARBANES. I want to change my vote to aye.

The CLERK. Mr. Sarbanes changes his vote to aye. Mr. Chairman, 31 members have voted aye, 7 members have voted no.

The CHAIRMAN. The motion is agreed to.

The Chair will recess this meeting at this time to hear Mr. Garrison for the rest of his presentation, and the Chair will advise the rest of the public that this is a closed briefing session.

The meeting is recessed until the call of the Chair.

[Whereupon, at 4:58 p.m., the committee was recessed subject to the call of the Chair.]

# IMPEACHMENT INQUIRY

## Executive Session

MONDAY, JULY 22, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to recess, at 5:05 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, special counsel to the minority; Albert E. Jenner, Jr., senior associate special counsel; Richard Cates, senior associate special counsel; Bernard W. Nussbaum, senior associate special counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; Edward S. Szukelewicz, counsel, Ben A. Wallis, Jr., counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; William P. Dixon, counsel; Michael W. Blommer, associate counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will please come to order.

Mr. Garrison will be recognized. Mr. Garrison.

Mr. GARRISON. Thank you, Mr. Chairman, ladies and gentlemen of the committee.

When we recessed the hearing at noontime, I had been discussing the question of the President's statements during his conversation with John Dean on the morning of March 21, in terms of whether what the President said that morning can reasonably be construed and found by you as a fact to constitute his joining the conspiracy. Words are capable of being overt acts or conduct sufficient to satisfy the legal requirement of affirmative action, when accompanied by the requisite intent and knowledge. I think that I have discussed the question of what "knowledge" would mean, in the context of a matter being brought to the President's attention with some possibility of doubt in his mind as to the accuracy of all or part of what he was being told.

I would like to focus now, though, on the question of whether the President did manifest approval or acquiescence in the making of the March 21 payment. I distinguish this point from the one I made previously, which was whether the President actually authorized and

directed the payment to be made. I am satisfied that, as a matter of law, if the President knew that the payment was going to be made, and knew its purpose, and if its purpose was to serve as what we commonly call "hush money," and if he, upon knowing and understanding it, then acquiesced in the payment going forward, a reasonable legal argument can be made that because of his position as Chief Executive vis-a-vis Government officials, or perhaps even simply as an employer vis-a-vis employees, he was in a position and had a duty to stop the payment from being made and, therefore, could be held criminally liable for failing to do so.

However, as a question of fact, I would suggest to you that it is far from clear that the President actually did acquiesce in the payment of money to Howard Hunt which apparently occurred some time later that day. And I would suggest for your consideration that, in determining what the state of the matter was at the conclusion of the conversation, it is relevant to consider not only what the transcript itself shows, but also what the apparent impression or understanding of the participants in the conversation was after the conversation ended.

Now for purposes of examining the transcript itself, first I would cite you to page 121 of our publication:

"Transcripts of Eight Recorded Presidential Conversations", and at the bottom of that page I would suggest that you focus your attention on the word "it" in the sentence, "Well for Christ's sakes get it in a, in a way that, uh—who's, who's going to talk to him?"

My reason for doing so is that I think it is a reasonable interpretation of the evidence that the antecedent of the word "it" is "signal" which appears a few lines up. Mr. Dean says, "I think he ought to be given some signal, anyway, to, to——"

The PRESIDENT. Yes.

DEAN. Yeah, you know.

The PRESIDENT. Well, for Christ's sakes get it \* \* \*

Now, there is obviously another possible interpretation of that very same language, which would be that the antecedent is the words "hundred and twenty or whatever it is," several lines up where the President says, "That's why your, for your immediately thing, you've got no choice with Hunt but the hundred and twenty or whatever it is."

I point this out because in determining as a question of fact whether, all things considered, the President associated himself with the conspiracy, you may consider it relevant to know whether the President meant to get Hunt a "signal," as a holding action. or whether he meant to get him the money. It's obvious, I think, that the language in this transcript by the President is susceptible to an interpretation that the President considered the possibility of some action being taken on Hunt's demands as a matter of "buying time."

Mr. RANGEL. Mr. Chairman, point of clarification.

Counsel, tell me what Mr. Dean's response is to the President after the word signal is used.

Mr. GARRISON. His response is, "Well, Colson doesn't have any money though."

Mr. RANGEL. Thank you.



Mr. FLOWERS. What page is that?

Mr. HOGAN. Mr. Chairman, I thought he was not to be interrupted.

Mr. RANGEL. I didn't understand whether I was using the same transcript.

Mr. GARRISON. Mr. Chairman, I have no objection at all to being interrupted for questions like that, because that gives me the opportunity, for example, to point out the word "though." The word "though" seems to suggest a consideration in addition to money: you may get Mr. Colson to talk with him, but Colson doesn't have any money.

Mr. RANGEL. That clears it up. Thank you.

Mr. GARRISON. I would point out to the committee that on page 125 of the "Transcripts of Eight Recorded Presidential Conversations," a little below the middle of the page, the President says:

"That's right. Try to look around the track. We have no choice on Hunt but to try to keep him——"

Mr. DEAN. Right now, we have no choice.

The PRESIDENT. But, my point is, do you ever have any choice on Hunt? That's the point.

DEAN. [Sighs.]

The PRESIDENT. No matter what we do here now, John——

DEAN. Well, if we——

The PRESIDENT. Hunt eventually, if he isn't going to get commuted and so forth, he's going to blow the whistle.

I believe the members of the committee will find evidence in the transcript from which they may infer that the President had rejected the granting of clemency as a realistic option, for whatever motive. If that is the case, the passage to which I have directed your attention would indicate that the President at this moment is stating that, since the indispensable prerequisite for keeping Hunt silent is incapable of being met, the entire effort to keep Hunt silent is necessarily doomed.

I would further direct your attention to page 129, to the very last paragraph of that page near the end of this conversation, where the President says, "All right. Fine. And uh, my point is that, uh, we can, uh, you may well come—I think it is good, frankly, to consider these various options. And then, once you, once you decide on the plan——" and so forth. I direct to your attention this language because, in light of the previous portion of the transcript that I pointed out, it supplies additional evidence of the possibility that the President had not made a decision with respect to what he was going to do at all, and it would seem that at this point in the transcript, had the President himself understood that what he had said would result in Howard Hunt's being paid, he may have referred to the state of the matter at that time differently.

I would also say to the members of the committee, in all fairness, that I do not in any way suggest that the only way in which the President could have by language associated himself with the conspiracy that morning would be by reference to money. The question would be whether he in any way manifested, through his words, knowledge and intent to participate, but the reason for my focusing upon the question of money is obvious, since a payment was in fact subsequently made, and there has been a great deal of controversy within the committee over whether he approved it, on the one hand, or acquiesced in it, on the other. And I would suggest that the language from the transcript

itself indicates that the President may not even have acquiesced in the payment being made.

Now, turning to the question of impressions formed by participants in the conversation, of course what they said during the conversation is relevant. But, at this point, what was said after the conversation also becomes relevant.

Evidence bearing upon this question is found at pages 1032 to 1034 of the GPO edition of the edited White House transcripts. This is a conversation, and I am now at page 1032 of the big blue book, the GPO edition of the edited White House transcripts.

The CHAIRMAN. What conversation is that, Mr. Garrison?

Mr. GARRISON. This is a conversation that took place on the afternoon of April 17, 1973, in a meeting among the President, Mr. Halde-  
man, Mr. Ehrlichman and Mr. Ziegler.

The CHAIRMAN. Is that not one of the conversations that we requested and subpoenaed?

Mr. GARRISON. It is, Mr. Chairman. At page 1032:

HALDEMAN. Told you about it, told me about it. I was in here when he told you.

PRESIDENT. Good. What did we say? Remember he said, "How much it is going to cost to keep these, these guys" (unintelligible). I just shook my head. Then we got into the question—

HALDEMAN. If there's blackmail here, then we're into a thing that's just ridiculous.

The PRESIDENT. He raised the point—

HALDEMAN. (Unintelligible) but you can't say it's a million dollars. It may be \$10 million. And that we ought not to be in this—

The PRESIDENT. That's right. That's right.

HALDEMAN. We left it—that—we can't do anything about it anyway. We don't have any money, and it isn't a question to be directed here. This is something relates to Mitchell's problem. Ehrlichman has no problem with this thing with Hunt. And Ehrlichman said, "(expletive removed) if you're going to get into blackmail, to hell with it."

The PRESIDENT. Good (unintelligible). Thank God you were in there when it happened. But you remember the conversation?

HALDEMAN. Yes, sir.

The PRESIDENT. I didn't tell him to go get the money did I?

HALDEMAN. No.

The PRESIDENT. You didn't either did you?

HALDEMAN. Absolutely not. I said you got to talk to Mitchell. This is something you've got to work out with Mitchell, not here—there's nothing we can do about it here.

Likewise, on page 1034:

HALDEMAN. You explored in that conversation the possibility of whether such kinds of money could be raised. You said, "Well, we ought to be able to raise—"

The PRESIDENT. That's right.

HALDEMAN. "How much money is involved?" and he said, "Well it could be a million dollars". You said, "That's ridiculous. You can't say a million. Maybe you say a million, it may be 2 or 10, and 11".

The PRESIDENT. But then we got into the blackmail.

HALDEMAN. You said, "Once you start down the path with blackmail it's constant escalation".

The PRESIDENT. Yep. That's my only conversation with regard to that.

HALDEMAN. They could jump and then say, "Yes, well that was morally wrong. What you should have said is that blackmail is wrong not that it's too costly."

Now, I realize that there is a possibility—although I would suggest that essentially it would be speculation rather than something that is actually proved by the evidence—a possibility that the President, in conversations subsequent to the 21st of March, rehearsed with people

accounts of what had previously been said. I want to be clearly understood on this: I am suggesting merely a possibility. I do not say the evidence clearly shows this, but I want for the moment just to assume that the President was rehearsing and was talking, so to speak, "for the record," and I would suggest to you that if that were the case, and if the President were aware that he had in fact left an impression with Dean that he felt the money should be paid, it would be the most natural thing for the President to "make his record" by explaining away why he had appeared to acquiesce.

On page 1034 of the GPO transcripts, where the President and Mr. Haldeman appear to agree that the President probably had made a mistake in suggesting by his language on the 21st only that "hush money" would cost too much. They agreed that the President should have said it was wrong to raise money to pay defendants to remain silent.

Now, I think that may be considered to have significance in this respect: once again, it is susceptible of an interpretation that the recollection that the President and Mr. Haldeman had of the March 21 conversation which bothered them and which, if they were speaking "for the record" on April 17, they would feel an impulse to correct or explain away, appears to be a recollection of the President's having given the wrong reason for disapproving, and not a recollection of his having approved the payment to Hunt.

If the President and Mr. Haldeman were indeed "making a record," and if they were in that process trying to explain away the damaging things that the President felt he had said, then they certainly didn't cover the subject well if they felt that the really damaging thing was that the President had approved the payment or acquiesced in it. I think the committee is entitled to make a distinction between approval or failing to give the right reason for disapproval, and the committee can give that difference such weight as it sees fit.

You should consider also the possibility that the President and Mr. Haldeman were not "making a record." If they were not "making a record," which is, of course, possible since the existence of a White House tape recording system was not widely known at that time and may very well have not been anticipated to be known in the future, then, of course, what I have said would still apply, but with greater force because then their motives would be less suspect, and the recollections that they appear to have had could be considered as more probably genuine.

Next I would like to cite you to essentially the entire testimony of John Dean before the Senate Select Committee in June of 1973. This was 3 months after the March 21 conversation, rather than 15 months afterward, which was the case when Mr. Dean testified before this committee recently.

Mr. Dean told the Senate Select Committee, I think you will agree, in essence that it was the Hunt demand which precipitated his going to the President to tell him all, that the thing in effect had just gotten out of hand, that he couldn't wait any longer. He and Mr. Moore talked about it, you will recall, on the 20th—there is some discrepancy as to who suggested to whom that Dean tell the President all but, in any event, clearly it was the Hunt demand that precipitated Mr. Dean's



going in to the President on the 21st of March and telling him more than he appears ever to have told him before.

Now, Mr. Dean in his SSC testimony did say that some things had been discussed on March 13 concerning money, and some things on the 21st, and I would ask you to consider that whether they were discussed on 2 days or on 1 would probably be irrelevant to this limited point; if that Hunt demand was so alarming to Dean that he was moved to go in to try to make sure that the President knew all he needed to know in order to be able to handle this acute situation, do you believe that Dean would have left that meeting without knowing what the upshot of the conversation was with respect to that payment? Do you believe that Mr. Dean would not have told the Senate Select Committee in June of 1973, if, in fact, he felt after the meeting that the President had either acquiesced in a payment that the President knew was to be made by someone else or had directed that such a payment be made? But Mr. Dean at no point in his testimony before the SSC ever suggested that the President knew that a payment was to be made and acquiesced in it, or ordered a payment to be made.

Dean's testimony on that question, as a matter of fact, is typified at volume 4 of the SSC hearings, page 1423, when he referred to March 13 and said that on that date they discussed raising a million dollars. He said "The money matter was left very much hanging at that meeting. Nothing was resolved." And I assure you if you read Mr. Dean's testimony before the SSC, every word, you will not find a bit of evidence that would suggest that as of last year Mr. Dean had formed any impression at all that the President knew that the last payment was about to be made and acquiesced in it.

I would next direct your attention to the transcript of the conversation on the late afternoon of March 21 which is found on page 133 of your "Transcripts of Eight Recorded Presidential Conversations." There the President says:

So then now—so the point we have to, the bridge you have to cut, uh, cross, I understand, is whether uh, we, uh, what you do about, uh his present demand. Now what, what, uh, what (unintelligible) about that?"

DEAN. Well, apparently Mitchell and, and, uh, uh.

UNIDENTIFIED. LaRue.

DEAN. LaRue are now aware of it, so they know what he is feeling.

THE PRESIDENT. True. (Unintelligible), do something.

DEAN. I, I've, I've not talked with either, I think they're in a position to do something, though.

Now, let us focus upon Dean's statement, "I. I've not talked with either." This is taking place the afternoon of the day in which Mr. Dean told the President that he had talked with John Mitchell the night before, using code words to keep Mrs. Mitchell possibly from overhearing and understanding what they were saying. It is clear that if Dean tells the President that afternoon that he has not talked with either of them, LaRue and Mitchell, that means one of two things: either he has not in fact talked with either of them since the morning meeting, or he is withholding the fact that he talked with one of them since the morning. I think those are the only two choices.

If Dean had not talked with either Mitchell or LaRue since the morning conversation, then, since he did not tell the President that morning that he had already talked with LaRue, John Dean in going in supposedly to help the President straighten this matter out actually

withheld from him probably the most critical fact he could have revealed with respect to the payment situation. LaRue had always been the money man, but Dean withheld from the President the fact that he, Dean, had already had all the conversations that one would ever need to have in order to set the last payment in motion. Dean didn't tell the President that. He sat there through the whole conversation in the morning, going over options, commiserating, but withholding a cardinal fact about the state of the matter at that moment. Even at the time when the President was supposedly being told by his counsel the truth about the kind of situation that had developed in recent months, even at that moment the President was poorly, poorly served by his counsel.

The only other alternative is that, when Dean said in the afternoon that he hadn't talked with either Mitchell or LaRue, he was lying. Frankly, the evidence would not support that inference, because we have no evidence that Dean had talked with either Mitchell or LaRue since his morning conversation with the President.

I would suggest to the members of the committee that, even on the morning of March 21, 1973, Dean did not really "come clean" with the President, did not tell him what was really going on. He did not tell him what he had already said to LaRue, and you will recall that, in essence, through his conversations with both Mitchell and LaRue, Dean had left it up to the two of them to make arrangements to have the payment made to Hunt.

Why wouldn't Dean tell the President that? Well, I suggest the answer that Mr. Dean was never fully candid with the President about either Dean's own role in the matter or what others were doing. In effect, Mr. Dean went in there that morning and talked with the President as if all of these things were up in the air awaiting the President's decision, and so forth, and didn't tell him that he, Dean, had really already taken care of getting the matter handled.

If the members feel, nevertheless, that the evidence as to the President's conversations on the 21st of March or on any other day in March or April 1973, satisfies them that the President had sufficient knowledge and understanding and manifested an intent to conspire to obstruct justice, then you would still have to consider the question of the significance of his conduct. This relates to the point I made this morning about the exercise of political judgment, with a capital "P" by the House and by the Senate. Whether or not it would be legally relevant to the issue of guilt or innocence in the case of an ordinary criminal conspiracy prosecution, the time when the President entered the conspiracy, if ever, and the degree of his activity in it, if any, is nevertheless relevant to these proceedings. There has never been a better established rule of social regulation than that the precise nature of one's conduct determines the precise punishment or sanction for it. If any individual were charged with criminal conspiracy in a court of law, the trier of fact and the sentencing judge would have to consider fully at what point the person became a member of the conspiracy, what his role then was, what were all of the circumstances pertaining to his becoming a member at that time, and would in essence consider all factors in aggravation and mitigation before imposing sentence. I think you would find that the evidence before you is such as to raise grave doubts—and I don't want to use any term of



art now to describe the state of the evidence—but I think you would find a great deal of uncertainty, ambiguity in the President's actions, and also in his words from March 21, 1973, on which would raise questions as to whether he ever knowingly joined the conspiracy at all with an intent to frustrate the purposes of the law.

Further, even if you were to find that on the 21st of March or thereafter the President knew what he was doing with respect to "buying time" or what have you, this is precisely the kind of difference in degree of culpability, as contrasted with the allegation that he ran and directed the conspiracy from the 17th of June 1972, forward, to warrant the House, in the exercise of its political judgment in this case, to conclude that the only sanction available in the impeachment process—removal—should not be imposed.

MR. SEIBERLING. Mr. Chairman, I wonder if we might interrupt just to ask Mr. Garrison on page 133, what he considers the significance of the word "true," the President spoke toward the bottom of the page, after Dean said Mitchell and LaRue are apparently aware of.

MR. HOGAN. Mr. Chairman, I thought we were going to let him conclude before questions were asked.

MR. SEIBERLING. Well, he said he welcomes them.

MR. HOGAN. Well, yes, but I don't welcome them. I want to hear him and leave.

THE CHAIRMAN. Let Mr. Garrison conclude.

MR. GARRISON. My point was that where the only sanction available to the Congress the premise is removal from office, it would seem entirely consistent with the purposes of the impeachment process, and the role of the House in that process, to consider whether there is a difference in result, depending upon when, how, and for what purpose the President combined with others for even a momentary delay, or "buying time" as it appears in the transcript, in the expedition of getting the truth of the Watergate case out. Those are judgments which it is not only proper, but which I suggested this morning are constitutionally necessary for the House to make.

There are only two other points I wish to make. One is that there are a couple of matters which have arisen during presentation of the evidence which I think are suggestive of the kind of problem that could be encountered in the Senate if cases built largely on inferences and on second- and third-hand hearsay are prosecuted by House Members without advance realization of what a closer scrutiny of the evidence would reveal.

The first example concerns the so-called missing tape of John Dean's April 15, 1973, conversation with the President. Dean's SSC testimony suggested that he thought the President might have been recording him on that occasion. That was the conversation, according to Dean, in which the President spoke in a low voice and said, in effect, "I guess I shouldn't have talked about clemency with Colson."

I submit that the weight of all the evidence shows that there probably never was a tape of that conversation on April 15, just as the White House has contended, and that the entire controversy over whether a tape of that conversation once existed is a result of simple mistakes. There was a common source of error which led to many months' searching for a tape which never existed, and the common source of the error was either the President or Henry Petersen, a



man whose motives are not in any way being impugned here. I am suggesting merely a mistake. Henry Petersen testified here and before the Senate Select Committee, and he first told it to the Special Prosecutor, that he talked with the President twice on April 18, 1973, and that in the first of those conversations the President asked him if it was true that Dean had been granted immunity and that Petersen had said "No." According to Petersen, the President had said, "Well, Dean told me he had immunity, and I have it on tape," or words to that effect.

Henry Petersen told that to the Special Prosecutor on May 29, 1973, before he testified publicly during the SSC hearings, and on both occasions Petersen said that the President had been referring to a conversation he had had with Dean on the night of April 15, 1973.

Now, ladies and gentlemen of the committee, in order to find out whether Petersen's reconstruction is plausible, read the transcripts of Dean's two conversations with the President on April 16, 1973, which are printed in our "Transcripts of Eight Recorded Presidential Conversations," one in the morning and one in the afternoon. Read them from beginning to end and you will see that, in context, it is crystal clear that Dean was at that time still negotiating with the prosecutors. He was in no way representing to the President that he had been immunized. Therefore, it makes no sense at all for the President actually to have claimed to Henry Petersen on April 18 that Dean had told him on the 15th that he had been immunized. Petersen and the President had talked several times since the 15th, including once by telephone about an hour and a half after the conversation with Dean had ended, but the President said nothing to Petersen then about a Dean claim of immunity.

I don't know whether the mistake was Petersen's or whether it was the President's. But clearly April 15 would be the wrong date for Dean to have claimed to have been immunized.

Now, why do I say a common source of error? You recall that Dean himself testified before the SSC that he had the impression that when he talked with the President on the evening of April 15 that the conversation was being recorded. That seems so nice and neat and consistent, because the President supposedly told Petersen that he had a tape of that conversation, so Dean thinks he was being recorded. Henry Petersen was still the common source of error, because on April 18, well in advance of Dean's testimony before the Senate select committee, Henry Petersen called Earl Silbert and told Silbert to check with Charles Shaffer, Dean's attorney, to find out whether there was some misunderstanding about Dean's status as to immunity, since the President was saying he had a tape of Dean telling the President that he had been immunized.

So as of April 18, April 19, Dean's attorney would have known that the President was claiming to have a tape of Dean saying he had been immunized. Moreover, since Dean was cooperating with the Special Prosecutor, any time after May 29, 1973, he very likely would have learned from that source what Petersen had told them on the same subject.

The second point, if the clerk could pass these out—is there a clerk?

The CHAIRMAN. Mr. Garrison, we are going to have a vote in a few minutes.

Mr. GARRISON. Yes, sir. It won't be necessary to spend much time on this.

What I am now distributing to members of the committee, and this will eventually be published as part of the minority report's Watergate section, is, I believe, the answer to the controversy over whether the President has withheld from this committee relevant portions of his conversation with John Dean on March 17, 1973.

[The document referred to above follows:]

COMPARISON OF EXCERPTS FROM JUNE 4, 1973, HOUSE JUDICIARY COMMITTEE TRANSCRIPTS AND MARCH 21 AND 22, 1973, HOUSE JUDICIARY COMMITTEE TRANSCRIPTS

*June 4*

Book IX. 209----- PRESIDENT. And he said, "No one in the White House except possibly Strachan is involved with, or know about it.

*March 21, a.m.*

HJCT. 86----- DEAN. "Gordon," I said, "first, I want to know of anybody in the White House was involved in this." And he said, "No, they weren't."

*June 4*

Book IX. 209----- PRESIDENT. Magruder had pushed him without mercy.

*March 21, a.m.*

HJCT. 86----- DEAN. And he said, "Well, I was pushed without mercy by Magruder to get in there . . ."

*June 4*

Book IX. 209----- PRESIDENT. "Strachan may have pushed him." He says he (unintelligible) tickler and figured he was supposed to push him.

*March 21, a.m.*

HJCT. 84----- DEAN. And through Strachan, uh, who was his tickler, uh, he started pushing them.

*June 4*

Book IX. 208----- PRESIDENT. "Kleindienst wanted to turn Baker off (unintelligible) embarrass the FBI."

*March 22*

HJCT. 105-155----- The is a general discussion of Kleindienst, Baker, and the FBI.

NOTE.—Book IX, references are to HJC's Statement of Information: HJCT are to "Transcripts of Eight Recorded Presidential Conversations."

The White House supplied an edited transcript of the conversation on the 17th of March which included only a short excerpt pertaining to Dean's telling the President about the Dr. Fielding break-in. When we went through the evidence before the committee and came to the transcript of the President's conversation on June 4, 1973, the point was made—and I suggest to the members of the committee it was perfectly legitimate to make the point, and it was done in good faith—that when the President on the 4th of June was reviewing his notes and was relating to Haig and Ziegler what he had heard when he was listening to some of his tapes, his notes seem to show that on March 17 Dean told him a number of things about the Watergate matter.

The sheet of paper that we have just distributed compares quotations that the President on June 4 relates to Ziegler and attributes to the March 17 conversation with quotations from our own transcript of the March 21 and 22 conversations.

Mr. RAILSBACK. Mr. Chairman——

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I just want to say to the gentleman that I agree with him and you and I have discussed about this before.

Mr. GARRISON. Yes, sir.

Mr. RAILSBACK. I do find it strange that Mr. St. Clair didn't tell us that, though.

Mr. GARRISON. That is, I am sure, for all of us not the only strange thing that has happened this year, in this inquiry. I agree with the Congressman, but I would have to say simply that I give you the page citations for you to make your own judgment as to whether, in fact, the President was not simply mistaken as to which date the quoted words were actually uttered. Most of them come from the 21st of March, perhaps taken from Haldeman's notes of his having previously listened to that tape, and one of them comes from the 22d of March. So you have a picture of the President with a note pad, scribbling all over it, going through his notes with Mr. Ziegler and having certain statements that were actually made on March 21 or 22 mistakenly related to Ziegler having been made on March 17 instead. It is for you to read those passages and conclude whether that inference is correct or incorrect.

Mr. SARBANES. But, did we seek the conversation of March 17?

Mr. GARRISON. Yes, sir, and the President has said that he supplied us with the only relevant portion of it.

Mr. SARBANES. That was a conversation as I recall that lasted for some time and we were given just a few pages; is that correct?

Mr. GARRISON. Yes, sir. And I think the adverse inference suggested was that if, in fact, these June 4 quotes had been taken off the tape of March 17, the President had withheld from this committee and from the public Watergate material which was highly relevant. I respectfully suggest to the Congressman that it appears that the President simply made a mistake on the 4th of June as to on which date those quotes originated. This is another instance of a common course of error, because J. Fred Buzhardt submitted to the Senate select committee in June of 1973 a memorandum of conversations between the President and Dean in which Buzhardt attributed to March 17 some conversation about Watergate, you will recall. Of course he did. The President apparently gave him that information. The President——

Ms. HOLTZMAN. Mr. Chairman——

Mr. GARRISON. Pardon?

Ms. HOLTZMAN. Excuse me. How do you know that Mr. Buzhardt's statement was made on the basis of the President's statements, as opposed to Mr. Buzhardt's listening to the tapes himself?

Mr. GARRISON. Ms. Holtzman, that is clearly a matter of inference from all the known facts. I am not suggesting—if I could have shown you the page, I certainly would have done that—but I am suggesting as a matter of argument that if the President's own notes on the



4th of June were erroneous as to the date on which these matters were discussed, it is reasonable from the evidence to infer that that was the cause of Mr. Buzhardt's error.

The CHAIRMAN. We will come back immediately after this vote and have you conclude and then Mr. Jenner has 15 minutes.

[Recess.]

The CHAIRMAN. Will the committee members please take their places and we will resume.

Mr. Garrison has his concluding remarks to make, and I think he has some corrections.

Mr. GARRISON. Mr. Chairman, and ladies and gentlemen of the committee, in connection with the question I was discussing just before the recess I would like to cite you, to pages 182 and 183, book IX, part 1 of the committee's statement of information, where the question was asked by Steve Bull as to which tapes the President wanted to hear on that date, June 4, 1973, and the President told Mr. Bull that he didn't need the tape of March 21 because he had it.

The quote is: "You can skip the April 15th." And Bull says: "And March 21st?" And the President says. "March 21st, that's right. I have those."

It should be pointed out to you that Mr. Haldeman had checked out the March 21 morning tape on the 25th and 26th of April, and had himself made notes on the content of those conversations, which the President, one infers had available to him on the 4th of June. That may be why the President didn't need to listen to the March 21 tape himself on June 4.

One correction in my remarks of this morning: When I was discussing the problems arising from efforts from the majority and minority to harmonize their views in collaborating on joint staff projects, I used the word "dilute" in reference to legal memorandums, and I want to explain what I meant by that.

In a joint project, the prevailing view among the majority members of the staff may be that a certain proposition is true. The prevailing view among the minority members of the staff may be that the same proposition is untrue. The tendency is to attempt to split it down the middle, or perhaps a little bit closer to the majority viewpoint because of the weight in the staff, so when I spoke of "dilution" of the majority position. I did not mean to suggest that this would be done as part of any attempt by the minority to distort the facts or to distort propositions of law, but merely that the honest view of most minority staff members might be that a particular preposition advanced by the majority was not tenable.

I would like to conclude by referring you to a statement of the President contained in the June 4 transcript when he described his position while being confronted with these various Dean revelations in March of 1973. Starting on page 227, book IX—and this is our June 4 transcript—book IX, part 1, at the bottom of page 227, the President said:

Don't you think it's interesting though to run through this. Really the God-damned record is not bad, is it?

ZIEGLER. There is no—I am not—(unintelligible) Watergate makes me feel very good.

And then at the top of page 228 :

The PRESIDENT. Well——

ZEIGLER. Not that I——

The PRESIDENT. It's not comfortable for me because I was sitting there like a dumb turkey.

I would submit to the members of the committee that if you believe that when the President made the statement on the 4th of June he was not merely speaking "for the record," he was not merely rehearsing for ulterior motive, but that it was an accurate reflection of his state of mind regarding the situation which had confronted him 3 months earlier, and if the members of the committee further believe that the evidence is insufficient to show that before the month of March the President really had been involved in the Watergate coverup conspiracy, then you may well want to consider the implications of that, in terms of President culpability in this matter. If the President was really sitting there "like a dumb turkey" while all around him his staff was engaged in activities that subsequently he learned were ones that he and you and I would not consider appropriate for White House employees, whether or not they were criminal, you might very well consider that fact to be of critical importance in determining whether the President should be impeached for his handling of the Watergate matter.

I appreciate very much the opportunity that the chairman has given me to present these views. I only want to say that it has been my feeling throughout this inquiry that every member of this committee is exactly as interested in the truth of this matter as I am. I accord that to every member of the majority as well as to every member of the minority. I have considered it a privilege to work for each of you, and I trust that you will consider this evidence in the same spirit in which I do, which is only to arrive at the whole truth of the matter.

Thank you, Mr. Chairman.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Thank you, Mr. Garrison.

Mr. Rangel.

Mr. RANGEL. You use the word I and we and now and then you were talking about the minority views, and quite frankly I have been pleased that those words have not been used too often either by members or staff. And most of the publicity has surrounded your selection of making a presentation, but since it is stated on the record that you were talking about the minority views, is this to say that with the exception of Mr. Jenner that all of the other lawyers that are registered Republicans share your view? How do you explain who on your staff your views represent?

Mr. GARRISON. Well, Mr. Rangel, I think the answer to that question is the same as it is in the case of any enterprise in which there are a large number of people participating. There is always at some point a spokesman, and it is my understanding that the minority members of this committee directed me to prepare this statement of views.

Mr. RANGEL. I see. Now, I think you have cleared it up. I think what you said had to be said, but when you talk about the minority you are talking about the members of the committee and not the staff members who couldn't possibly be labeled as minority staff members?

Mr. GARRISON. I am speaking, Congressman, exactly the way that any counsel speaks when he is asserting a viewpoint on behalf of his clients.

Mr. RANGEL. I think you have cleared it up.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I am not going to ask you any questions. I merely want to state that in my opinion, Mr. Garrison, you have made a major contribution to our deliberations here, and I want to say this on behalf of the minority, the others, I think there are 14 minority counsel, 14 lawyers who serve on the minority staff, and I have had the opportunity to be in contact with all or most of them, and I know they are highly dedicated, capable young men who have endeavored to contribute to this entire proceeding in helping us to arrive at the truth.

And I did participate with the other minority members in designating and requesting that you present this in our behalf, and I think it has been a very important contribution, and I thank you.

Mr. GARRISON. Thank you, Sir.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I would like to associate myself with the remarks of Mr. McClory and say that in my judgment the committee is indebted to Mr. Garrison and to these other young gentlemen here for the service and for the statement of a position which, in my judgment, very badly needed to be stated in order to help us arrive at a proper and fair solution. And I think we are all indebted to him for the work, and these other men also, and I would like to make that for the record.

The CHAIRMAN. The committee, prior to committing Mr. Garrison to make his presentation, was scheduled to hear from Mr. Jenner. But Mr. Jenner at that time deferred, and I have since talked to Mr. Jenner, and Mr. Jenner has stated that in light of what has transpired, all he would require is some 15 minutes, so that he may make a presentation to the committee.

Mr. SANDMAN. Mr. Chairman, point of inquiry, please. In view of what has happened, and since this now has become an adversary proceeding, since Mr. Doar has presented the entire case against the President, I am wondering what Mr. Jenner's position is here today. As one member of the minority, he certainly isn't representing me. I don't know what members of the minority he is representing. He has already agreed with everything that Mr. Doar has said, and I think in summation it is only fair that we shouldn't hit the poor old Sam before and after. So the question is what is his position today?

Mr. McCLORY. Would the gentleman yield?

Mr. SANDMAN. I will be happy to.

Mr. McCLORY. I thank the gentleman for yielding. I have a strong feeling that the problem with which the minority is struggling with at the present time is one that we should try to resolve in camera, may I say, and not here at the——

Mr. SANDMAN. I would suggest, Mr. Chairman, we resolve this here. I mean, this man was supposed to be the attorney for the minority. He has been anything except the attorney for the minority. He has already come out——

Mr. KASTENMEIER. Regular order.

The CHAIRMAN. I regret to state that this is a matter that the Republicans or the minority might want to resolve.

Mr. SANDMAN. What is his position? Who is he representing today?

The CHAIRMAN. Well, insofar as the Chair knows, and the commit-



tee knows, there has never been any other official designation of Mr. Jenner other than that he represents this committee as its minority counsel, and the minority counsel was accorded the privilege of making a presentation. He deferred, very, very kindly and generously until Mr. Garrison, being whom he then referred to as the junior member, and I thought it was that kind of a deferential kind of courtesy which Mr. Jenner is very capable of, and I applaud it for him, and Mr. Jenner will now be heard.

Mr. McCLODY. Well, Mr. Chairman, I would like to correct you in this respect, and that is that the unanimous action of the minority members resulted in the request that Mr. Garrison make the presentation on behalf of the minority, and he has made the presentation for the minority. I don't know what contribution Mr. Jenner is going to make. He can make whatever presentation you authorize him to make. But, the minority presentation has been made substantially by Mr. Garrison.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. I don't know what you refer to him as, but we will hear from Mr. Jenner. Mr. Jenner is, and no one has advised me to the contrary, Mr. Jenner was officially carried and is officially carried until this time and however you as the minority want to refer to him or treat him.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Nevertheless we will accord him I am sure the privilege that he is entitled to, and I would hope that the members on the minority side accord the man who has been their counsel for this time that kind of courtesy.

Mr. RAILSBACK. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, can I just say that I am certain that there are members on this side that want very much to hear Mr. Jenner. And as I recall, Mr. Jenner was slated to follow Mr. Doar. He has been working on the case from the very beginning, I think your characterization is absolutely correct, that he deferred to give Mr. Garrison as much time as he wanted. Mr. Garrison has been on, so it is ridiculous to bring this up right now, and I want to hear Mr. Jenner, and there are others as well.

Mr. BROOKS. Regular order.

Mr. GARRISON. Mr. Chairman, if I might?

The CHAIRMAN. Mr. Garrison.

Mr. GARRISON. If I might, with all due respect to Mr. Sandman, say that I have very high personal regard for Mr. Jenner, and I for one would like to hear what he has to say.

The CHAIRMAN. Mr. Jenner. And might I say to the gentlemen that while it had been intended all along prior to the presentation that Mr. Jenner was going to make a longer presentation, but a while ago Mr. Jenner did tell me that in the light of what had occurred all he wanted was about 15 minutes to make a presentation. He did not specify other than that, and I think, Mr. Jenner, without saying any more, Mr. Jenner, we, I am pleased to hear you as a member of the committee as we recognized Mr. Garrison as a member of the staff, and everyone else here.

Please proceed.

Mr. JENNER. Mr. Chairman, and ladies and gentlemen. What I wanted to start out to say was that it has been a privilege to be counsel and to take part in this constitutional process and investigation. It is the greatest privilege I have had in my career, and I daresay the greatest privilege that any lawyer could ever have in his career, past present, or future. And as I said when both you, Mr. Chairman, and Mr. Hutchinson questioned me in January of this year, when you probed as to whether I had any biases one way or the other, I responded that I had none, that I would bring to the committee my litigation experience and sense of professional responsibility to bear in any effort to bring the whole truth to this committee, to the House, and to the country. And that is what I have been doing.

I am also a human being. I have love for my country, and I have love for my Constitution, and love for my profession and my family. My Constitution and my country come first, and my profession next. And I regret to say that in my career my family has come third. Especially is all this so when the office of the Presidency of the United States is in any respect in jeopardy. And that is the manner and fashion in which I want to say to all of you that once the evidence was put together I did come as I said last Thursday, I believe it was, whatever day it was, I came to the professional judgment that I stated on that occasion.

I could have no other judgment in my heart, and I am not talking about the weight of the evidence now, I am talking about Bert Jenner. When I reached that conclusion then true to what I think I have been as a lawyer for over 43 years, I voiced it. It was not easy. Should I be put in the same situation again in the future, I would do it again. The truth is whole. It is not many sided. It is not political.

The Constitution, the Nation, and the people's government are before you as the elected representatives of the people. Thus, you are sitting as statesmen, not politicians. You have acted, in my judgment, as statesmen, to your credit and to the credit of your constituents who chose you.

Mr. Garrison this morning adverted to politicians in the small "p" sense. He asked that you consider the President's judgments in the summer and fall of 1972, as being made as a politician with a small "p" I must say to all of you, with candor and frankness, that I cannot conceive of the Chief Magistrate of the United States as a politician with a small "p" especially when dealing with matters involving the Constitution of the United States. I am sure Mr. Garrison didn't mean to suggest that you bring small "p" political considerations to your discharge of your responsibilities in this constitutional inquiry. The fact is that you are all statesmen. No consideration of constitutional problems of this magnitude is to be undertaken by anybody unless he or she is a statesman, not a politician with a big "P", not one with a little "p," but a true statesman. This is so because statesmen deal with the Constitution and with their country. That's what you are doing. I fully believe that everyone of you, everyone of you, is a statesman. You have evidenced that attitude throughout the weeks that have elapsed, or months that have elapsed, but especially the last 10 days, or the last 2 weeks, especially the last 2 weeks. I see you agonizing. I see you searching for the evidence, the truth, to enable you ultimately to reach sound judgments.

There has been much talk here about standard of proof, burden of proof, inferences to be drawn from the evidence. We lawyers know all about these principles. But, they have to be positioned and applied in the light of the function that you are undertaking. If you had had your choice at the outset as to whether to participate in these proceedings, I am sure you would have refused, many of you at least. Impeachment is awesome. It is awesome, but not in the sense that it is difficult. It is not that you don't want to face the agony of decision. It is awesome in the sense that it involves life and liberty and freedom of the 220 million people and citizens of this Nation, as well as those who will come after them. This is what makes it awesome. You will reach into your hearts when you vote to find what you think is absolutely the right decision. You will be thinking of your oath to preserve, protect, and defend the Constitution. That's the standard of proof you are going to apply. It isn't one you are going to find in law books. It is in your mind and your hearts.

Now, Mr. Garrison expressed some regret this morning. He said that in retrospect he was sorry that this committee had determined to have a staff that was a single and unified staff rather than the usual majority and minority groups. He felt perhaps it might have been better had there been a separate minority staff. I do want to say that I do not agree with that position. Had that been so, what has been brought to you would have been relatively impossible. These fine young men and women of the minority staff would have been second-class citizens. We as a band of 14 so-called minority lawyers could not have brought all of this before you in the way it has been brought, complete, unbiased, and as a whole, rather than partisan. It is clear that you have acted quite responsibly, in a constitutional sense, in doing what you did in that connection.

I would like to advert to a couple of evidentiary matters. Mr. Garrison quite properly this morning turned to the matter of whether you should draw adverse inferences from the failure of the President of the United States to respond to the subpoenas you have issued. And in this connection he remarked that inferences were weak evidence. I cannot agree. You all know, as good lawyers, that inferences have content in the light of their context. They must have a base and must grow out of that base. That is, you cannot draw an inference from nothing. The inference may be strong or it may be weak and of slight weight depending on the context from which its is drawn.

With respect to the failure of the President to supply the subpoenaed tapes and documents the adverse inferences to be drawn flow from a strong background context.

I will refer to a few of those background contexts. Those to which I refer are illustrative only. There are others.

The first of them is the matter of our acquisition of an extra 15 minutes of the taped conversation of September 15. You will recall that there was a misadventure that took place when our tape people, pursuant to arrangement with Mr. St. Clair, went over the White House to have taken off for them the tape of the September 15 conference between the President, Mr. Haldeman, and Mr. Dean in the Oval Office. Unbeknown to us at the time, the Secret Service agents in taking off a tape for us from the original inadvertently started the recorder at a point 15 minutes ahead of the point of time that had been specified in



the committee's subpoena. The time point you had fixed in your subpoena was the best that you could do based on the limited data you had which consisted of Presidential logs. What was revealed that was new? I call your attention to pages 1 and 2 of the transcripts of eight recorded Presidential conversations which have been printed and published by the committee. Those 15 minutes cover all of page 1 and that part of page 2 running down to the bracket within which it is recited: "Dean enters room". You will find in that extra bit of taped conversation significant revelations which, absent the Secret Service agents' misadventure, would not have reached this committee because of the President's refusal to supply all relevant taped conversations. In the middle of page 1 there are references to Dean working on the IRS to stimulate tax audits of persons listed on Colson's list of McGovern supporters.

There are other new matters—Watergate, coverup, concealment, containment. All these matters are pertinent and relevant to and needed by you in these proceedings.

What is more, they are adverse in content and support an inference that other taped conversations which the President has refused to produce would be similar in content.

Now secondly, the September 15 tape has another significance, and that is there are 17½ minutes of taped conversation that took place at the end of that meeting which we did not receive from the White House at the time the Secret Service agents took off the segment furnished us as I have related. Ultimately, and again by chance, a very small portion of the 17½ minutes was received through Judge Sirica by way of a transcript. That bit related to Watergate only. Thereafter, the limited portion relating to Watergate came to your attention when Judge Sirica examined that 17½ minutes pursuant to the mandate of the court of appeals to determine whether there was any Watergate material in that 17½ minutes. He reported in the affirmative. As a result, you had a very short page and one-half of excerpts from the last 17½ minutes confined, however, to Watergate. But, a material portion of your investigation deals with abuse of the IRS. What happened? Within the past 6 weeks, the Special Prosecutor petitioned Judge Sirica to reexamine the 17½ minutes to see if there was anything on abuse of the IRS in that 17½ minutes. And the good judge did so, and he reported in open court that there were conversations respecting abuse of the IRS that was relevant to the impeachment inquiry. Mr. St. Clair, in open court and for the President, refused to consent to your being supplied with Judge Sirica's transcript of the portion of the 17½ minutes relating to abuse of the IRS; furthermore, Mr. St. Clair objected to delivery of that transcript to the Special Prosecutor and on behalf of the President appealed Judge Sirica's turnover order to the court of appeals where the matter is now pending. Judge Sirica also ruled, as I have reported to you, that the court of appeals mandate authorizing him to examine the tapes in camera was so limited that he was without authority to give the committee a copy of the transcript, much as he wished to do so.

Now, another pertinent event is the fact that by—again by happenstance—we received from the Special Prosecutor by mistake on his part 160 odd pages or 180, of Mr. Ehrlichman's notes which had been filed with the court by the President in response to Mr. Ehr-

lichman's subpoena. You had subpoenaed the President to deliver a copy of these notes to the committee. We received from the President approximately the same number of pages but a large number of them were marked or blanked out. On the other hand, the 180-odd pages of the same notes received, by happenstance, from the Special Prosecutor contained far fewer blanked out pages. In the Special Prosecutor's copies, there is a host of material that is relevant and pertinent to these proceedings, and of a thrust adverse to the President's position, some of which has already been cited to you in the material presented to you last week, which is blanked out in the material received from the White House. Thus, here again, you have an example, a context, from which you may draw an adverse inference with respect to taped conversations and documentary material which the President has refused to produce.

I mention these three solely to say to you that it is true, as Mr. Garrison argues, that you draw inferences, adverse or favorable as the case may be, in the light of the context of the evidence before you. And here in three instances—and there are more—in which this matter arose, this context, something that was relevant, material and pertinent and of adverse thrust to the President's position came to the attention of the committee.

Also in this connection I mention the President's edited transcripts. You may attribute the President's difficulties with the edited transcripts to the fact that maybe stenographers put headsets on and just typed away. We must accord to the President the benefit of that doubt. But that is beside the point. The point here is that there were substantial omissions from those edited transcripts as well as material differences in text that were adverse to the President's position, as you know, so, when you consider the drawing of adverse inferences in the light of context, you must consider not only the eight recorded transcripts which we deciphered, printed copies of which you have, as well as the comparison of White House edited transcripts and Judiciary Committee transcripts of the same Presidential conversations. Our transcripts as against the edited transcripts of the same tapes revealed in a good many respects material differences, including omitted materials, adverse to the President's position.

I attribute no evil purpose with respect to the edited transcripts but I do say that when you determine whether you are going to draw adverse inferences with respect to tapes and documentary materials refused to you by the President, you must do so in the light of the contexts to which I have called your attention, not to mention others that time does not permit me to mention.

There is a second subject, the discretion of the prosecutor, to which Mr. Garrison alluded this morning. He thought that perhaps you ought to put yourself in the position of a prosecutor who is exercising discretion as to whether he is going to urge a grand jury to return an indictment. He suggested that a prosecutor wrestles with the question of guilt, and he suggested that you might likewise do so—he didn't say you should, he said you might. Mr. Garrison was fair throughout all his presentation and it was very well done and I compliment him on it. I join with the comments that have been made complimenting him. But I say that if you are inclined to accept his suggestion you need not go beyond the record before you. In that record is the an-



swer. Henry Petersen was a prosecutor. He reached the conclusion that at least Mr. Ehrlichman and Mr. Haldeman and Mr. Dean should be indicted and he spoke to the President about that. You must also have in mind when you are considering that context that Mr. Jaworski has returned a number of indictments of the closest of Presidential aides. You must also have in mind that the grand jury made a presentment to this committee on top of it. Those are reasonable people. They exercised serious judgment, constitutional judgment in this case. And last that very grand jury has named the President as an unindicted coconspirator. What I am saying is I don't think that the discretion of the prosecutor standard is one that is applicable here, but if applicable, you have at least those four instances in which that discretion was exercised in favor of both action and prosecution.

I call your attention to the fact that the Constitution provides first that the House shall have the sole power of impeachment, and second, and separately, that the Senate shall have the sole power of trial, conviction, and removal. The House is not to invade the Senate function. This is a constitutional matter. It is very serious. All of you want to be right in your hearts, all the rest of your lives, no matter which way you vote. In order to do so, you have to be pretty well convinced in your heart. That is the ultimate test, a very strong test. But convinced of what? Convinced that there is evidence here, both circumstantial and direct, clear evidence, that there is sufficient here to warrant the presentation of this very serious matter to the Senate of the United States for trial.

I am not going to argue the evidence at all. I am not going to say anything at all about the evidence. All I am going to say is that the rules of evidence—oh, by the way, Mr. Chairman, I should say this. There are two citations in Mr. Garrison's brief to the proposed Federal Rules of Evidence. However, both of the rules he cites are ones that subcommittee No. 7 of this committee, chaired by the distinguished gentleman from Missouri, Mr. Hungate, did not approve. Neither of them is in the House's Federal Rules of Evidence bill that is now in the Senate. The rules cited by Mr. Garrison were advanced to this committee in the material submitted by the U.S. Supreme Court to the House. I had the honor of being chairman of the Judicial Conference Advisory Committee that drafted those proposed rules. However, Mr. Hungate's subcommittee and thereafter this committee and still later the House, did not approve them.

I would like to say a word or two about another aspect of the drawing of inferences. I said something about one aspect a few moments ago when I discussed the subject of adverse inferences. But what I'd like to say a few words about now is the matter of inferences upon inferences. It has been said repeatedly here that you can't draw an inference upon inference. This is not the law, as Wigmore points out in volume 1, section 41, of his great work. It is an achronism. Drawing an inference on an inference is perfectly proper. My statement needs fleshing out. If one observes a truck moving down the street lettered Jones Grocery & Market, a proper inference to be drawn is that the truck is owned or leased by Jones Grocery & Market. From this inference may be drawn the further inferences that the driver of the truck is the employee of Jones Grocery & Market and that he is



engaged in the business of Jones' Grocery. These are inferences upon inferences. They may be rebutted, but they are properly drawn in the first instance. So, it is not the law of evidence that an inference may not be predicated upon or drawn from another inference.

There have been suggestions that inferences are weak evidence. This is but a general truism applicable to all evidence. Not all evidence is strong. Not all evidence is weak. We must return to the context of the inference. If the context is strong, then the inference is strong.

It is also properly argued that if two inferences equally valid and founded on the same context can be drawn from the same evidence, one incriminating and one exculpatory, then the exculpatory inference prevails or must be drawn. But you must first take a hardheaded look at the evidence. If you then thoroughly believe in your heart, in your mind, that two inferences, one good and one bad, can be drawn from the same facts, then, of course, you must take the inference that favors the President of the United States. If you conclude, however, that two inferences can be drawn that are not equally balanced, then you must draw the inference that predominates. Whichever way you draw those inferences you will be doing so in favor of the Constitution and pursuant to your constitutional responsibility.

You are all lawyers. You have been acting and conducting yourselves splendidly, absolutely splendidly, in seeking through all the manner and means the evidence affords, and with the help of staff and others, to reach the truth in this serious constitutional matter. I have every confidence that whatever your individual vote, it will be only after you have studied the record, weighed the evidence carefully, and searched your conscience and with your country and your Constitution and the hopes and longing of the people fully in mind at all times.

Thank you, ladies and gentlemen. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Jenner.

Mr. McCLODY. Mr. Chairman, I move we adjourn.

The CHAIRMAN. The committee will adjourn—as the Chair has stated the Chair will advise the members regarding the time at which we will consider the matter of the procedure of the debate.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Before adjournment may I just say there is no mistake as to the part of the opinion of this committee that I have found Mr. Jenner's contributions to have been enormously worthwhile and I have found his presentation just now to be extremely moving and I have been most pleased to have been a part of an inquiry in which he has had a significant role.

Mr. WIGGINS. Mr. Chairman, I have an inquiry and I hope you will entertain it. The last I heard was that the staff had submitted a booklet of theories of—not theories—proposed articles of impeachment containing some five tabs, as I remember.

Has there been any further refinement of that so that we know what in the world we are going to be talking about when we convene on Wednesday to talk about them? I still do not know and I do hope that that question can be answered soon.

The CHAIRMAN. That is a question I am sure that the members, whoever they may be, who are working on proposed articles may submit

to the committee when there is on that date certainly a recognition by the Chair of such as is disposed to offer those proposed articles. Thus far those are the proposed articles that are being considered.

Mr. WIGGINS. Well, only in the interest of fairness to everybody. I mean majority as well as minority members, we should advance intelligent views based upon something and the notion that it can be circulated at the beginning of the debate sounds to me as if we are going to erode the quality of the debate. I would hope. Mr. Chairman, that you will do all in your power to at least put together what you feel the committee is going to discuss and have it available to the members for their consideration for the maximum period of time.

The CHAIRMAN. That is what the Chair is attempting to do and—

Mr. WIGGINS. Well, go ahead indeed, Mr. Chairman, and get the mimeograph machine running.

Mr. HUNGATE. Mr. Chairman, I would make—I am not one of them drafting anything, I can assure you. I make the same request for substitutes.

I would like to know as much about all of them as I can.

The CHAIRMAN. No. The Chair recognizes what the gentleman from California is stating and I think it is valid that the committee should have before it in sufficient time that product which it would begin to work from and I think that that is tremendously important and the Chair hopes to be able to elicit from the members just that kind of a product. I hope that we can do that by no later than tomorrow. The Chair would hope to have them before the members at that time.

Mr. BUTLER. Are we meeting on Wednesday?

The CHAIRMAN. That is correct.

Mr. BUTLER. At 10 a.m.?

The CHAIRMAN. Well, the Chair has not yet set the time as to whether we meet at 10:30 or whether we meet later on in the afternoon. These are some of the things that the Chair is attempting to work out so that there will be that kind of product before the committee. I would hope to have it before them at least a day in advance.

Mr. HUNGATE. Do we meet tomorrow?

Mr. BUTLER. Are we meeting in some group to discuss this thing between now and tomorrow?

The CHAIRMAN. Well, the Chair has stated that it would hope to be able to meet with some of the members or those who are disposed to talk about this and discuss this as we did the other day when I think it was helpful to some of the members and the Chair is disposed to say that we could meet tomorrow, tomorrow morning, and try to work some of these things out in the formal briefing session because I don't think any formal meeting is going to accomplish anything other than—

Mr. WALDIE. Mr. Chairman—

The CHAIRMAN. No. The meeting on procedure won't be—I think it is only going to take a little time, but I would rather work it out and get together with the ranking minority member and see if we can do something about presenting the proposed rule of procedure.

Mr. DENNIS. Mr. Chairman, let us know when.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. When will we be meeting, then, tomorrow? Will we be meeting tomorrow?

The CHAIRMAN. The Chair would set a schedule of meeting tomorrow morning at 10:30.

Mr. RANGEL. Mr. Chairman, on that point——

The CHAIRMAN. But not a meeting.

Mr. DENNIS. For what purpose?

Mr. RANGEL. Mr. Chairman?

Mr. DENNIS. Informal discussion? Is that it?

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. When you say you are setting a meeting, I wonder if tomorrow it might not be possible for us to have a very informal work session here, not sitting up here but sitting down there, with staff, going over proposed theories and articles without a stenographer, just as lawyers trying to find out each others thoughts as we go through this. It doesn't mean that everyone's attendance would be required but I know many of us are searching to find that type of ground where we can get agreement and to find out other questions we may have with staff, and if we are going to have a stenographer reporting everything, I don't think we will have the same worth as if we just talked as a group of lawyers trying to find our way out of this maze. I think for all of us we would be better prepared—come the television cameras, something which I think as a group of lawyers we would at least like to know what areas we disagree on and what areas we don't.

The CHAIRMAN. The Chair——

Mr. BUTLER. That is what you had in mind with your 10:30 meeting tomorrow.

The CHAIRMAN. This was what I had in mind. It was the same informal type of briefing. The problem is attempting to arrange for the committee members that kind of a seating arrangement that could accommodate what you have just suggested.

Mr. RANGEL. Well, we won't need a stenographer, though, would we, for that type of meeting?

The CHAIRMAN. No. There would be no necessity for a stenographer. If the members would, I feel that that informal briefing session would be very helpful for the members and we would try to arrange it if it is at all possible so that instead of meeting up here, we are around the table. I don't know just how we are going to be accommodated, though, with microphones.

Mr. RANGEL. I don't know whether we need mikes, really.

Mr. SEIBERLING. Why can't we sit up here, Mr. Chairman, but just have an informal procedure?

The CHAIRMAN. Well, we will then meet informally tomorrow morning at 10:30 in a closed—that will be a closed briefing.

[Whereupon, at 7:05 p.m., the committee recessed, subject to call of the Chair.]



The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author then proceeds to discuss the various factors that have shaped the development of the United States, including the role of the government, the influence of the economy, and the impact of the culture. The paper concludes by emphasizing the need for a continued study of the history of the United States in order to ensure a bright future for the nation.

# IMPEACHMENT INQUIRY

## Committee Business

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TUESDAY, JULY 23, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to recess, at 5:20 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, special counsel to the minority; Albert E. Jenner, Jr., senior associate special counsel; Bernard W. Nussbaum, senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; William P. Dixon, counsel; Franklin G. Polk, associate counsel; and Michael W. Blommer, associate counsel.

The CHAIRMAN. The committee will come to order. And the question before the committee today is the consideration of a resolution concerning the procedure that will take up the question of the possible impeachment or whether the committee will recommend articles of impeachment, and for that purpose I recognize the gentleman from Alabama, Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman.

I have a resolution at the clerk's desk. I ask that it be read and copies distributed to all of the members.

The CHAIRMAN. Will the clerk please read the resolution.

The CLERK [reading]:

*Resolved*, That at a business meeting on July 24, 1974, the committee shall commence general debate on whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States. Such general debate shall consume no more than 10 hours, during which time no member shall be recognized for a period to exceed 15 minutes. At the conclusion of general debate, it shall be in order to consider a privileged motion to report to the House a resolution, together with articles of impeachment, impeaching the President of the United States. The proposed articles shall be read for amendment under the 5-minute rule. Each proposed article,

and any additional article, shall be separately considered for amendment and, after all proposed articles are perfected, separately voted upon as amended for recommendation to the House. Members may be recognized for a period of 5 minutes to speak on each proposed article and on any amendment thereto, unless by motion debate is terminated thereon. At the conclusion of consideration of the articles for amendment and recommendation to the House, if any article has been agreed to, the privileged motion shall be considered as adopted and the chairman shall report to the House said resolution of impeachment, together with such articles as have been agreed to.

MR. FLOWERS. Mr. Chairman, if I might explain several pertinent points of this?

THE CHAIRMAN. The gentleman is recognized for 5 minutes.

MR. FLOWERS. Thank you, Mr. Chairman.

I believe the basic resolution is easily understandable, and I would be very brief in my remarks.

First of all, this calls for the general debate period of no more than 10 hours during which time each member will be recognized for a period not to exceed 15 minutes. At the conclusion of the general debate, that is after each member has had up to 15 minutes, thereby taking no more than 10 hours at a maximum of the committee's time, it would be in order for the chairman to recognize someone to make a privileged motion to report to the House of Representatives a resolution, together with articles of impeachment.<sup>1</sup>

In other words, that would be the time, that the resolution, together with articles, would be laid on the clerk's desk, so to speak.

Then the various articles, if there are more than one, or any amendments to the various articles would be debated seriatim, that is one after another, in order, together with amendments thereto, for the purpose of perfecting the various articles.

And after all proposed articles are perfected, they will be separately voted upon as amended for recommendation to the House. And afterward, the important consideration here is that you would have not a vote on one article after debate of that article, and then debate following on another article and a vote on that. There would be perfecting amendments on each article, and then, so to speak, the article would be set aside until all such articles had been perfected, plus any additional articles that might not be a part of the original resolution, but which might be offered by way of amendment to the original resolution, and there would be a final vote at the conclusion of the perfecting process on all of the articles.

At any time during the amendment process, or at any time that an article was offered, the members would have the right to speak under the 5-minute rule, either to the article or to the amendment. It would not be necessary to use the process of moving a motion to strike the last word, but under this rule a member would have a right to speak to the article for 5 minutes, or to an amendment to the article and then after the final vote, if any articles were agreed upon, the resolution, together with such article or articles, would be reported to the House in the usual fashion.

MR. HUTCHINSON. Would the gentleman yield?

MR. FLOWERS. I yield to the gentleman from Michigan.

MR. HUTCHINSON. I thank the gentleman for yielding.

<sup>1</sup> See "Appendix VII.—Donohue Resolution and Articles of Impeachment", p. 2253.



As I read the language of the amendment and the resolution, I just raise this so that we will be clear on it. When it says that no member should be recognized for a period to exceed 15 minutes, that would not preclude one member from yielding time to another member, would it, during that 15 minutes?

In other words, if one member wanted to consume only 10 minutes of his 15, he could reserve his 5 minutes and yield it to another member so some other member could speak for 20 minutes?

Mr. FLOWERS. I would say to the gentleman from Michigan that it is my understanding that that is a recognized procedure with the necessary consent that is usually granted as a matter of form. I refer that to the Chair as to how the Chair would handle that. I don't have any personal opinion on it. I personally think that it would be in order to utilize a member's time as that member sees fit. He would have the right to yield for the purpose of discussion to another member, for a question asked to counsel, or whatever question that member desired to use his 15 minutes.

Mr. HUTCHINSON. Well, I would agree that that is the way I would hope that was intended, but I guess one could lay it out on the record so that it would be understood that that was the way it would operate.

Now, the other question I wanted to raise to the gentleman is the matter of when a resolution setting forth articles of impeachment would be laid before the committee. As I understand the gentleman's resolution, that would not occur until after conclusion of this 10 hours of general debate?

Mr. FLOWERS. That is correct.

Mr. HUTCHINSON. Now, in the House, of course, we always have something before us for general debate. We have a bill. It seems to me that it would be more orderly to have the Chair recognize a member, and have the resolution containing articles offered at the outset and then, of course, that would not preclude any member offering amendments by way of additional articles during the amending process, but it would, at least, put everybody on notice as to what amendments or what articles and what counts were initially going to be before the body.

In other words, if we are kept guessing as to just precisely what the articles and what the counts are, if we don't know what that is going to be during all of this 10 hours, we don't know whether a particular matter to which we want to address ourselves is something that is going to be in the initial resolution or whether it is something that is going to be offered by way of amendment.

But, it does seem to me as though it would be more fair to have the resolution setting forth, that is to say the initial vehicle set forth at the outset, and then everybody is on notice. If he wants to add to that, he knows that he has got to persuade the members to adopt an amendment.

Mr. FLOWERS. I fully understand the gentleman's position and I would respectfully disagree to this extent. I think it would be much more appropriate, Mr. Hutchinson, to have a full discussion of all of the ramifications of all of the work that we have done without anybody feeling restricted to any particular proposed article of impeachment, either representing that it ought to be passed and voted

favorably, or that it ought to be defeated. This is the period for general debate.

Mr. DENNIS. Would the gentleman yield?

Mr. FLOWERS. And I would recall, in my review of the only other guidelines that we have, that is the impeachment trial of, impeachment proceedings, for Andrew Johnson, that the impeachment was voted before the articles were ever drawn.

Mr. DENNIS. Would the gentleman yield?

Mr. FLOWERS. This is, you might say, a derivation of that, together with what my best judgment on it is, and I think it would be an appropriate way to handle this matter, and I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding.

With respect to Mr. Hutchinson's question, you have said that you wanted to defer to the Chair, and we didn't get a response from the Chair. I would like to just elaborate on the inquiry a little bit and ask if in addition to the practice of permitting, as we do under the House rules, of yielding to another member part of his time, whether that would apply also to the 5-minute rule, and whether also the member would be entitled to reserve time under his 15-minute allocation?

Could we have that expression from the Chair?

The CHAIRMAN. First of all, the Chair will state that it will adhere strictly to the rules of the House. However, we will be guided by this resolution, should this resolution be adopted. That would mean that members would, of course, be permitted, if they so desire, to yield their time, their time to such other members who would request that that member would yield.

I would, however, in the interest of having orderly procedure, instead of having members reserve their time so that they move out of order, I would, however, proceed in the manner in which we have been proceeding, and that is during the course of the general debate to recognize members as we have been doing during the course of this hearing, and that is to recognize members first from the majority side and from the minority side.

Mr. McCLORY. And utilize their time without reserving it?

The CHAIRMAN. And utilize their time.

Mr. McCLORY. I just have one other question, Mr. Chairman.

In our earlier discussions, if the gentleman will continue to yield, we were considering a period, a maximum period of 20 hours for the amendatory stage, and now we have substituted the 5-minute rule. I would merely like, and there is authority to terminate debate under this resolution?

Mr. FLOWERS. That is correct.

Mr. McCLORY. It would not be your intention, would it, Mr. Chairman, to terminate debate earlier than 20 hours if there was still discussion going on?

The CHAIRMAN. No; that certainly is not the intention of the Chair, and it is for this reason, to allow more flexibility, if 20 hours were to be consumed, that would, of course, be appropriate, and if the committee saw fit that it was necessary to continue beyond that time, there is nothing that would prohibit the members from going on for further consideration.

Mr. McCLODY. We could terminate debate after the 20 hours, but we would not, it would not be policy, or would not be your position to support a termination of debate earlier than the 20 hours?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. That, of course, would be a matter that the committee would have to act upon, but it certainly is not the intention of the Chair.

Mr. McCLODY. Thank you very much.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. And the previous question, of course, would be in order. Mr. Latta.

Mr. LATTI. Thank you, Mr. Chairman.

I would like to inquire whether it is still the intent of the Chair to have these 15 minutes entirely uninterrupted, as was discussed with the House leadership?

The CHAIRMAN. That is correct. I made that statement on the floor of the House. However, there would be the possibility that members might be interrupted because of a rollcall vote or some other business we have.

Mr. LATTI. We understand that. But, I mean as far as members of this committee, they will be extended the courtesy of making their 15-minute presentation without interruption by other members?

The CHAIRMAN. That is correct, except, of course, if the member sought to yield his time or any other member asked at that time to yield it.

But, I would hope that members, except for that fact, would not be interrupted.

Mr. LATTI. Thank you.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. First, to get it clear, as I understand it, everybody normally will have his 15 minutes, and it is the intention of the Chair to go in a regular order of which I perfectly understand.

The thing I wasn't quite clear, with all of the various discussions back and forth, is this: supposing I have rounded my 15 minutes and I use it up, and Mr. Froehlich, let us say, or somebody else, hasn't had his 15 minutes yet. If he wishes to yield to me 5 of his 15 minutes at that point, so that I can continue for another 5 minutes, that is permissible as I understand it?

The CHAIRMAN. No. No; that is not permissible, since the time of the gentleman would not have come at that time.

Mr. DENNIS. You mean we would have to wait until we got to Mr. Froehlich and then he could yield me the 5 minutes?

The CHAIRMAN. That is correct.

Mr. DENNIS. Well, I would suggest, Mr. Chairman, that assuming that Mr. Froehlich wants to yield, and of course I am using him only as an example, but assuming that any gentleman wants to yield, would it not be really more orderly and provocative of better debate if he was allowed to do it, even waive his option, it might make a lot more sense to let the man speak continuously, instead of coming back 10 hours later or something with another 5 minutes. I just think it would be better, if a member wanted to, to let him do that. Why not?

Mr. FLOWERS. Mr. Chairman, would the gentleman yield?



Mr. DENNIS. Why sure, I will yield, and I have one other question.

Mr. FLOWERS. I think that as a procedure that is not our normal procedure. I would say to the gentleman from Indiana, in all fairness to the other members who have not had a shot at their 15 minutes in prime time, that it ought to be spread around.

Mr. DENNIS. Well, I would just say to the gentleman from Alabama we are drawing our own rules now, and everybody is going to have the same length of time anyway. The only thing I am suggesting is that if you, for instance, have some very reasoned argument, as I know you would——

Mr. FLOWERS. Thank you.

Mr. DENNIS. And I wish to allow you to have 5 minutes of mine, why should I have to wait, or why should you have to wait until it gets around to me to do it? I would rather loan them to you right now, when it made some sense.

Mr. FLOWERS. The only reason would be was that we established rules which said that you had to do that.

Mr. DENNIS. I know, and I am talking about making the rule the other way, as I think it is more sensible.

Mr. FLOWERS. I just, in all good faith, disagree with you, and I think we ought to handle it this way, and I think the chairman has placed the interpretation as I would hope he would on this provision.

Mr. DENNIS. While I have the floor, I have one other question, which is the same one the gentleman from Michigan raised. We do only have 15 minutes. Now, it seems to me it is too bad to have to maybe waste them on subject matter that isn't even going to be in the articles. And that is why we ought to have a motion before us, and if we don't have a motion before us, which might not itself be too important, if we have the articles before us, but under this as drawn, you wouldn't even have to have the articles.

Now, the original draft was the other way around. We all saw it. It said you would have a motion with articles and you would know what to address yourself to. I suggest not only should we have the articles, the motion, at least the articles before you, you ought to have the articles before you even come here.

I kind of would like to think a little bit about what I want to say in my 15 minutes, and I would think anyone would, and I don't want to spend them on something that nobody is going to raise. I don't think that's fair at all.

Mr. FLOWERS. Would the gentleman yield?

Mr. DENNIS. Surely.

Mr. FLOWERS. I would say in the draft articles that the staff has prepared that the gentleman ought to have a sufficient amount of material to spend his 15 minutes on.

Mr. DENNIS. Well, you are so right. But, there are five or six of those draft articles, and the last rumor I heard, which is all we get around here, is that it is only going to be about three. I don't know which three or whether they are even the same three, and I think absolutely, ordinary decency requires that before we prepare our remarks, and we have only got a limited time, that we know in some fashion what we are going to be talking about. I don't want to talk about Cambodia if we aren't going to bring it up here.

Mr. FLOWERS. If the gentleman will yield further?

Mr. DENNIS. Sure.

Mr. FLOWERS. I do not see how that is possible, if you allow the amendment process anyway. If any article is potentially an article by amendment, anything that we have discussed as part of evidentiary material here that is an impeachable offense is potentially an article of impeachment. I think that we have got to assume that in any divisions of our 15 minute argument time.

Mr. DENNIS. Well, all I have to say to the gentleman, if my time has not expired, that either there ought to be some assurance that when the articles are given to us, in which case I don't particularly care about the motion, or else I am going to have to offer some kind of an amendment, because it just isn't fair to proceed in the dark.

Mr. KASTENMEIER. Mr. Chairman?

Mr. LATTI. Will the gentleman yield?

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

I am only disappointed not whether we have 15 minutes or how that shall be distributed, but that we, that the votes on the various articles shall come only at the end. Because, if I understand the gentleman from Alabama's resolution, it suggests that each article shall be considered for amendment, and I assume that to be fully susceptible of amendment or perhaps even striking, in other words, the amendment, the articles offered will be wholly vulnerable, but upon finishing work on each of these articles, rather than to have some affirmation by vote at that time, for some reason that I do not understand, that vote is postponed until the end. And I wonder why.

I would prefer it be otherwise. I don't propose to amend this resolution, but I think it would have been better legislative business to dispose of each article as we come to it, because, in effect, we do, by the amendatory process. Why should a vote be deferred to the end, I would ask the gentleman from Alabama?

Mr. FLOWERS. Well, it is a matter of preference, I guess I would say to the gentleman from Wisconsin I think it is preferable to fully amend, refine, and complete the final vote at the final time. All of the votes on all of the articles are supposed to be voted upon at a time certain at the conclusion of all of the debate and all of the amending. That is what I think would be orderly procedure. I can understand that there might be another view, but to my way of thinking that is the orderly procedure for handling this, and that is why I make this proposal.

Mr. KASTENMEIER. I take it the article is fully susceptible of any legislative device; that is, to substitute for, to strike, to amend, or anything else, when it is being considered for amendment, is that not correct?

Mr. FLOWERS. Well, I would hope that the provision of this resolution that says that they shall be separately voted upon as amended, for recommendation to the House after all proposed articles are perfected, that that would take care of the motion to strike, that the motion to strike would not be applicable in this particular instance at the conclusion of each article.

The process that I would propose here would be to refine the article with all amendments to the merits of the articles that are offered, and that they would be dealt with individually, and in total, totally, and then before any final disposition was made of that article that it be set aside until all of the others had been refined and amended. And the final disposition of all of these articles, voting on them separately, would be at the conclusion.

And if any single article is voted affirmatively, then the committee would report a resolution of impeachment, together with that article.

Mr. KASTENMEIER. The reason I say for this colloquy is that insofar as these proceedings will be public, so that they may be understood, so that the American people will understand the implications of having fully treated an article, the deferral of a final vote thereon, they may conclude that having perfected the article that we have, in essence, adopted it, only making a pro forma vote at the end.

Now, they may be left to their own judgment as to what that means, but I, as I say, think this makes it a bit unclear as to whether the final act will be an affirmation, which is suggested by the perfections in the amendatory process of each article.

Mr. FLOWERS. If the gentleman will yield further, there could conceivably be an article offered to which no amendments would be offered and there would be no vote taken on that article. It would still, under my resolution, be set aside for a final vote.

Of course, there could be debate under the 5-minute rule on that article, even if an amendment had not been offered, under this resolution, with the final vote on that article to be deferred until the conclusion of the debate and the amendment of the other articles.

Mr. KASTENMEIER. I appreciate the gentleman's explanation.

Mr. BROOKS. Will the gentleman yield?

Mr. WIGGINS. Mr. Chairman?

Mr. COHEN. Mr. Chairman?

Mr. LATTA. Would the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from California.

Mr. EDWARDS. I thank the gentleman for yielding.

I think that you can still expect to vote on every article, because one of the 38 members would very likely make a move or motion to strike, and I think a motion to strike is protected by the House rules, and I wouldn't think that this committee would have the power to suspend the House rules and preclude a motion to strike.

So perhaps you are going to vote on every article twice.

Mr. FLOWERS. Would the gentleman yield?

Mr. EDWARDS. Mr. Kastenmeier has the time.

Mr. KASTENMEIER. I yield to the gentleman from Alabama.

Mr. FLOWERS. Of course I do not propose that we can amend the House rules here. If the House rules, which I am not prepared to agree with the gentleman at this point, forbid the chairman from ruling a motion to strike out of order in deference to this resolution, should it be passed, then that would simply be the case.

But, I think we would need to investigate the applicability of the House rules in that regard.

Mr. WIGGINS. Mr. Chairman?

Mr. COHEN. Mr. Chairman?



Mr. BROOKS. Mr. Chairman?

Mr. KASTENMEIER. I yield the balance of my time.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

If I could address a question to the gentleman from Alabama concerning this resolution, as I understand it, you would be treating this particular matter as one total bill of impeachment or separate articles that might be reported to the House much the same as a Committee of the Whole acts, is that correct?

Mr. FLOWERS. That would be my concept of the process.

Mr. COHEN. A bill is considered by the House and debated before amendments are offered and voted upon, and there is a consistent, continuing reading of the articles as such, with a final vote taken at the end with a division, if a division is requested, so that you have one bill that would be reported, but with separate articles?

Mr. FLOWERS. I draw the analogy, if the gentleman will yield, to a debate of a bill in the House, Committee of the Whole House, say a bill that had several titles. You would debate each title, get through with that title and go to the next, and then you would possibly call for a division at the conclusion of that and vote on each one separately, the only difference being that under this resolution it would not require a come-back vote, you might say, of the whole package.

You would not have a single vote, say, assuming that two or more articles had been agreed upon. It would not require an additional vote on the several articles. You would have a separate vote only on each article.

Mr. COHEN. But in essence you are treating it just as we treat the Committee of the Whole taking a regular bill to the House, aren't you?

Mr. FLOWER. Yes, sir.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. COHEN. I yield to the gentleman from Ohio.

Mr. LATTI. Mr. Chairman, I thank the gentleman for yielding, and I hesitate to point this out. House Resolution 803 provides on line 8 the committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

Now, the way that resolution is before us, it makes no provision for any action other than impeachment. And I would respectfully suggest that the motion be made consistent with House Resolution 803 so that other resolutions or other recommendations would be in order.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. May I advise the gentleman from Ohio that the resolution, H. Res. 803, provides, as the gentleman does indicate, for the committee to report to the House of Representatives, resolutions, articles of impeachment or other recommendations that it deems proper.

This does not preclude the consideration of impeachment, since this is included within the resolution. And a member is not required to

vote for an article of impeachment under this resolution which would be before us, for the question would be whether or not there would be articles of impeachment adopted by that resolution.

Mr. LATTI. Is this my time or yours, Mr. Chairman? May I respond?

The CHAIRMAN. Well, it is your time.

Mr. LATTI. Thank you.

Mr. FLOWER. Would the gentleman from Ohio yield?

Mr. LATTI. One moment, while I respond to the chairman.

The point that I am making is that the resolution passed by the House of Representatives gives you the opportunity to make such resolutions, or other articles of impeachment or other recommendations as it deems proper, and the way the resolution is before us now, it excludes that right to us as a member of this committee, and so I would hope that the committee would see fit to be consistent with the resolution, to be consistent with that which passed by the House, and amend this resolution to give us the opportunity to present any other resolutions or other recommendations other than articles of impeachment.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I would like to make a comment on this resolution and say that I feel that there is an undesirable precedent, and unworkable precedent, and that I hope we will not follow it in the future.

I do not propose to offer an amendment to change it, but I want to state very closely that it is my sincere feeling that any postponement of a vote on each article is really unrealistic, in that we will have considered it by amendment.

The proper manner of handling legislation would be to consider article 1, and whatever is in it, and what is in that article, if anything, may have a very definite bearing on the next article to be issued or to be offered by other members. This is not a piecemeal operation, in which each one is already clearly delineated and defined. It is still a working document that has not been completed, and what is in article 1 is not necessarily going to be in article 2.

If article 2 is a very broad article, there may not be an article 3 and 4. If it is restricted by amendment, it may be a very definite change in what would be the actions of this committee. I think we restrict our own activities. I think we really make a farce of this decisionmaking, and I would say that without any doubt it will be very clear by the time that each amendment has been discussed, each article has been discussed, what the position of this committee is.

I think we serve no purpose by postponing it, and I would point out that it is my feeling and I would hope that the Parliamentarian, the counsel for this committee as well as the chairman, would protect the right of the members of this committee to offer a motion to strike, if they so desire. Probably I am not going to make that kind of a motion, you understand.

Mr. FLOWERS. Well, Mr. Chairman, would the gentleman yield?

Mr. BROOKS. I would want to protect that right for the members of this committee, and I believe that it is within the rules, and that they

have that right. And I wouldn't want, by this resolution, to preclude or acquiesce to any predetermined ruling that a motion to strike would not be in order.

I yield to my distinguished friend from Alabama, Mr. Flowers.

Mr. FLOWERS. If the gentleman dislikes it so much, you know, vote against it. You know, you just butchered my resolution, but I would say that in jest, of course, to my friend from Texas.

I do not agree with you. I think that this is an orderly way to proceed. I think that we must realize that should a resolution of impeachment be passed by the House and go to the Senate, that each one of the articles will have to stand on its own, and be considered on its own, and that is exactly what you would be doing under this process, as under the one that you have mentioned. I think that both of them are orderly processes, and both of them reach the same conclusion.

Mr. LATTI. Mr. Chairman?

Mr. BROOKS. I appreciate my friend's comment, and I would ask the chairman, while I still have the floor, if you would give me an evaluation as to this motion to strike controversy, if you have a judgment on it at this time, sir?

The CHAIRMAN. Well, should the motion to strike be offered, the Chair would have to recognize that motion to strike. The Chair could not prevent a member from offering a motion to strike, and a motion to strike would be in order and would be voted upon.

Mr. BROOKS. I want to thank the chairman, and I reiterate my feeling that this is not a healthy precedent, and it is a very unusual legislative procedure which would be difficult to implement, and will create several difficulties for us as we go along.

Mr. OWENS. Mr. Chairman?

Mr. BROOKS. I yield to my distinguished colleague, Mr. Kastenmeier.

Mr. KASTENMEIER. The unfair aspect of the motion to strike is, it gives two cracks at destroying the article. A motion to strike, when it is being considered, and then the final vote against it at the end, when there is only one opportunity to affirm the article; namely, at the end, and I think procedurally, therefore, the proposal of the gentleman from Alabama is defective, in at least that element of fairness in considering these articles.

Mr. RANGEL. Mr. Chairman?

Mr. OWENS. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

Mr. BROOKS. I yield to Mr. Owens.

Mr. OWENS. Following up on what the gentleman from Texas has brought up, I would like to propound a question to the sponsor of the resolution.

Suppose that through the amendment process, we arrive at an abuse of power article with five explicit provisions, and at the end we vote on that article and it fails. Someone at that point may desire to bring up another abuse of powers article with say three of those five. Would that, under your resolution, then be considerable?

Mr. FLOWERS. I think at that point, if that scenario would prevail, it would not be.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Sandman.



Mr. SANDMAN. I can find little wrong with the gentleman from Alabama's resolution, but there is something that I would like to have explained to me.

It would seem to me that he has to start out with some sort of a preamble, such as perhaps the committee has recommended on article 2, which is a simple paragraph.

Now, am I correct in that understanding that we are going to start with a simple preamble and say that for the following reasons the President of the United States should be impeached, and then we take those up one at a time?

Now, I've got another question, but I would like to have an answer to that supposition.

Mr. FLOWERS. Will the gentleman yield?

Mr. SANDMAN. Yes. Sure.

Mr. FLOWERS. I am not making or presuming to make any parliamentary decision at this time. But, it would be my judgment that if we offered a preamble, that is the whereas, or so be it, or the preamble as you put it, and it were not satisfactory to the committee, it would be amendable just like the articles.

Mr. SANDMAN. Right. You would start with a simple preamble that we would have a right to amend, and then go on to the individual articles one after the other, is that correct?

Mr. FLOWERS. Of course, that is correct.

Mr. SANDMAN. All right now. Question No. 2. I read with interest the brief made by the attorney for the President where he deals with particularity with what an article can include, and he specifically pointed out that it must be specific. And my understanding of it is each article is supposed to be singular.

Now, are we in accord with that as being the policy we will follow, and if you don't, what authority do you have to do otherwise?

Mr. FLOWERS. Well, I can't agree with all of the particulars of the President's lawyers' brief. I don't want to go so far as the Vice President said, that it is whatever a majority of the Congress thinks is an impeachable offense at any given time.

But, I think that it is within the discretion of this committee to pass an article for whatever reason this committee feels that on the day that we vote on it, using our own best judgment. But, I think the gentleman may be worrying about something that will not transpire.

Mr. SANDMAN. Oh, I think this is awfully important, and I would like to have the advice of counsel on whether or not this supposition is correct. Should each article be with a singular subject, and must it be specific as outlined in Mr. St. Clair's brief on articles of impeachment?

Mr. FLOWERS. Well, I think if the gentleman would yield, we would be taking a chance of not having a case that would stand the heat in the Senate if we do not, under our sole power of impeachment clause in the Constitution make a case within each article. Then we would have to bear the consequences of that.

The CHAIRMAN. Might I address myself to that question?

The article or articles which might be offered need not address themselves or itself to a specific subject. The article may be general with subjects contained therein, or other specifications which may be relative to that particular article.

Mr. RANGEL. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

Mr. HOGAN. Mr. Chairman?

Mr. SANDMAN. Do you have any authority for your ruling?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman, for recognizing me. About 35 minutes ago, the chairman recognized the gentleman from Alabama, and the gentleman said that he had a resolution at the desk. The clerk proceeded to read the resolution, and at the same time, one of the clerks started to hand out that resolution to the members. This member saw the resolution which was then being proposed about halfway through its reading when it got down here for the distribution of it.

I saw it at that time for the first time. And now, it is a fair inference to me, since the chairman recognized the gentleman from Alabama, that he may have discussed the resolution with the gentleman from Alabama in advance. I think it is not unlikely that the chairman knew of its contents in advance, and since we seem to be living in a world of inferences, I would be willing to speculate that the majority caucused on this issue in advance, had some notion as to its text.

I don't quarrel with that. I think you have a right to, especially on important matters, and this is relatively, in the great scheme of things, unimportant.

But now, Mr. Chairman, this resolution proposes to follow that same basic unfair procedure in a matter as important as the impeachment of the President——

The CHAIRMAN. Would the gentleman yield?

Mr. WIGGINS. I will in a minute, Mr. Chairman.

In any event, Mr. Chairman, do you understand, I am sure you do, what this proposal is? First of all, we debate for 10 hours without having anything before us, and then at the time the chairman will recognize a member who, presumably, will circulate an article which I may see for the first time at that moment. And I have got to bring my mind to bear and all of the members have to bring their minds to bear at that time as to whether it is appropriate in its form, or deserving of an amendment.

Now, I have been scratching out an amendment to this and trying to listen to the debate at the same time, and I find it very difficult. I have got to worry about getting a secretary out here to dictate an amendment during the course of these proceedings in order to have an amendment before the House. If that is not obviously unfair to all of the members on both sides, I will eat my hat.

They know that it is unfair, and I think that it should not be perpetuated in something as important as this.

Now, Mr. Chairman, I fully expect and recognize the right of a majority to caucus and work out whatever problems you have got on articles. I urge you to do it. But, as soon as you get it done, share it with us, so we will know what the hell we are talking about.

The CHAIRMAN. Well, would the gentleman yield?

Mr. WIGGINS. Now I will be pleased to yield.

The CHAIRMAN. Well, the gentleman, unfortunately, either doesn't keep informed with his own minority, because this matter has been discussed with members of the minority, several members of the minority, and information has come to the attention of the——

Mr. WIGGINS. All right now, Mr. Chairman, I will not yield at this time. I will not yield at this time, and I realize you have the gavel in your hand.

The CHAIRMAN. The Chair controls the time.

Mr. WIGGINS. I realize that, and so I embark on a perilous course at this moment.

The CHAIRMAN. I just want to set the record straight.

Mr. WIGGINS. What has been discussed with the minority has not involved this very critical point. This comes to me for the first time, the general text here. I don't care about the 15 minutes, I don't care whether we vote first or last. It makes no difference to me. We have been talking about those things.

But, now somebody proposes in a resolution, which the minority is seeing for the first time, that we are actually going to see these articles after debate at a time when they are circulated and read at the desk, and now that's not right, Mr. Chairman. You know that's not right.

The CHAIRMAN. I must correct the gentleman again when he says that this is being seen for the first time.

Mr. WIGGINS. Well, who did you talk to?

The CHAIRMAN. Well, I have talked to Mr.—members of your minority.

Mr. WIGGINS. I mean I want to go to that person and find out when he learned.

The CHAIRMAN. And advised the minority counsel regarding this.

Mr. WIGGINS. Well, I will yield to the gentleman from Michigan.

Would you tell me when you learned about this?

Mr. HUTCHINSON. Yes. If the gentleman will yield, I learned about it shortly before the commencement of this meeting, and about the time when a quorum call, live quorum call when we all had to go back.

Mr. WIGGINS. Who did you talk to?

Mr. HUTCHINSON. Wait a minute. I didn't discuss it with anybody else. I talked with the chairman about it, and I told the chairman that I wasn't persuaded with the wisdom of the way that thing was drafted, and I had an amendment prepared here, which I intended to offer, which would assure that we have the general debate upon some proposed articles of impeachment.

Mr. WIGGINS. Mr. Chairman, back to use up the balance of my time, which I assure you will be brief, I want to talk to some members over there. This is an important matter. You know it is an important matter, and you must know that the procedure recommended in this resolution is unfair.

It doesn't give the members of the minority notice as to what's going to be on the table. And if there isn't anything more fundamental in due process considerations than notice, I will invite somebody to inform me what it is.

Mr. HUNGATE. Will the gentleman yield?

Mr. WIGGINS. Sure.

Mr. HUNGATE. I would like to assure the gentleman that I am as unaware of the content of this as he was until we got here, and I assume any member is free to offer a substitute amendment, and any member can feel perfectly free to consider such amendments in the interest of a fair disposition of this matter.



But, we did, I suppose, know that this subject would come before this caucus.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I would like to make an inquiry of the author of the resolution. But, before that I would like to respond to Mr. Wiggins that I certainly wish that the Democrats were as organized as he believes that we are.

Excuse my back, Mr. Flowers, but the mike is here, and I am directing my question to you. But, if we vote on all of the amendments at the conclusion of the debate, the package of amendments, how would each member be able to determine which amendment he would want to vote for if, in fact, a theory of impeachment actually was threatened in two or three amendments? He would not have the benefit of understanding which amendments or theories would be rejected by this committee, but rather at the conclusion if there were five or six amendments, with an abuse of power, as an example, threaded through each one, would we not be taking a risk, as we go through with the remaining amendments, to vote after conclusion of debate in trying to decide which amendment would finally be passed, as opposed to the suggested method by Mr. Brooks of taking each amendment, determining whether it passes or fails, and then we will be able to deal with the next amendment by attempting to either amend or substitute that?

I yield to Mr. Flowers.

Mr. FLOWERS. If you yield, I don't think the gentleman from New York should have any problem in that regard. He will have a vote on each one of the amendments. It will just be postponed until after they have all been, each one of the articles will just be postponed until after they have all been amended. You will then have a vote.

Mr. RANGEL. I can't hear you. Would you turn the mike up a little, please? I am sorry, would the gentleman repeat his answer?

Mr. FLOWERS. Well, I didn't really give a very intellectual sort of answer. I just said I didn't think the gentleman from New York would have any problem with this process. You will have a vote on each one of the proposed articles at the conclusion of all the amendatory process of the articles, and which is, in effect, what you would have anyway.

Mr. RANGEL. Well, I don't understand the gentleman's answer, but it seems to me if we vote an article at a time, we would know what's before us, and would not have to vote against or select articles that are remaining.

I yield back the balance of my time.

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, I have a substitute resolution at the clerk's desk, if the clerk has delivered it.

The essence of the resolution—and the members, Mr. Chairman, will have a copy forthwith and a copy is at the clerk's desk, and I would ask the gentleman, Mr. Cline, to read the resolution.

The CHAIRMAN. Please report the resolution or the substitute.

The CLERK [reading]:

Mr. Kastenmeier offered a substitute resolution:

*Resolved*, That at a business meeting on July 24, 1974, the Committee shall commence general debate on a motion to report to the House a Resolution, together with articles of impeachment, impeaching Richard M. Nixon, President of the United States. Such general debate shall consume no more than 10 hours,

during which time no member shall be recognized for a period to exceed 15 minutes. At the conclusion of general debate, the proposed articles shall be read and members shall be recognized for a period of 5 minutes to speak on each proposed article and on any and all amendments thereto. Each proposed article, and any additional article, shall be separately considered for amendment and immediately thereafter voted upon as amended for recommendation to the House. At the conclusion of consideration of the articles for amendment and recommendation to the House, if any article has been agreed to, the original motion shall be considered as adopted and the chairman shall report to the House said resolution of impeachment, together with such articles as have been agreed to.

Mr. KASTENMEIER. Now, Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. This amendment in the nature of a substitute achieves two procedural matters that have been under debate. It does achieve the point made by the gentleman from Michigan, Mr. Hutchinson, and the gentleman from California, Mr. Wiggins, that there be articles prepared and available at the outset of general debate.

It also submits that there shall be a vote on each article at the conclusion of the perfecting thereof, meeting the objections raised by several members on this side.

It has, as a substitute, no other purpose than that as distinguished from the resolution of the gentleman.

Mr. McCLODY. Would the gentleman yield?

Mr. KASTENMEIER. Yes; I yield to the gentleman from Illinois.

Mr. McCLODY. I thank the gentleman for yielding.

I might say that this resolution, the substitute, is in the general form which was considered at the Republican caucus this morning, and does contain the objectives, as the gentleman stated, that were suggested or the objections that were made by Mr. Hutchinson and a suggestion he made with regard to the importance of having proposed articles of impeachment on the desk; and also the further element of having the articles voted upon as they are considered, after they have been considered. I think this is a vast improvement over the proposal offered by the gentleman from Alabama, and I would intend to support the substitute.

Mr. KASTENMEIER. Yes; I realize this places a great burden on those who are in the process of preparing articles, and I do not do this lightly, because I think it will necessitate a sort of 24-hour rush from here on out to arrive at articles which will be in a form that are thought to be worthy of consideration by this committee as early as tomorrow night.

Nonetheless, I do accept the premise that this is desirable and I move the adoption of the substitute.

Mr. DENNIS. Would the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Iowa, Mr. Mayne.

Mr. MAYNE. I thank the gentleman for yielding.

Do I correctly understand that the third line of the gentleman's resolution means that we will have before us the proposed articles of impeachment, which will be a part of the resolution that we are debating during general debate?

Mr. KASTENMEIER. The gentleman is correct. The line reads together with articles of impeachment, and I presume this to mean articles. Any member who has articles of impeachment will have at the desk

of all members the text of those articles to be considered during general debate or at any time thereafter.

Mr. MAYNE. Well, I want to commend the gentleman for his amendment, because frankly I was appalled by the resolution of the gentleman from Alabama, which, it seemed to me, left us in a position where we just simply wouldn't know what we were debating, and it seems to me that this is a great improvement, and I will certainly support this substitute.

Mr. SARBANES. Would the gentleman yield?

Mr. KASTENMEIER. I am advised by counsel that only those articles which would serve as a general vehicle for the debate would need to be at the clerk's desk at the commencement, that subsequent articles could be drawn and submitted.

Mr. SARBANES. Would the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Maryland.

Mr. SARBANES. I wanted to be clear on that point, because it was my understanding of the way this resolution is drawn that articles could be offered at a later date, subsequent to the general debate, which would mean that they would then be considered by the members of the committee without benefit of the general debate, and the general debate would run to a motion that was presented with articles that pertain to that motion, but it does not preclude the right to offer at a later date, when we are in the amending process, articles?

Mr. KASTENMEIER. I understand from what the gentleman from Maryland says that he is correct, that the Chair would interpret this to mean those articles which are to serve as the principal vehicle, for whom he would recognize first the person or persons offering them, those would have to be at the clerk's desk, and at each member's desk at the outset of the general debate.

This would not preclude other forms being offered later.

Mr. SARBANES. It was for that reason that I do not consider the resolution offered by the gentleman from Alabama as being as unfair as has been characterized in this meeting. I mean obviously the members of this committee, including those who have made the characterization, have been debating this issue in public and elsewhere for quite some time and I think are prepared to speak to it.

Now, the general debate will still not be able to cover articles that may be offered during the amending process.

Mr. DENNIS. Would the gentleman yield?

Mr. SARBANES. Surely.

Mr. KASTENMEIER. I yield to the gentleman from Indiana.

Mr. DENNIS. I agree, of course, that members have a right to offer further articles as amendments during the amending process, as the gentleman from Maryland says. I don't think you could be deprived of that right.

But, I also understand, and I think this ought to be very clearly understood, that as the gentleman from Wisconsin has said, the thrust, the purport and the intention of his amendment is that the main articles on which we are expected to vote will be here and be before us, and that is what we are doing. And we are not setting up any subterfuge where somebody can give us something here, and then bring all of the main articles in later on.



Now, time is needed, and I know this isn't easy. I am willing to give the staff all of the time they need. We don't have to vote on this starting tomorrow. This is a doggone important thing. If they need another day, I would say give them another day. But, the fair procedure is what we are talking about, and that is the way I understand this motion, and that is the way I expect it to be implemented as far as I am concerned.

Mr. LOTT. Would the gentleman yield? Would the gentleman yield?

The CHAIRMAN. Mr. Kastenmeier has the floor.

Mr. LOTT. Would the gentleman yield?

Mr. KASTENMEIER. Yes; I yield to the gentleman from Mississippi.

Mr. LOTT. This could be addressed to either one of these resolutions, but is it my understanding in the last sentence, where you have the wording if any article has been agreed to, and that would be the third full line up from the bottom, do I interpret that properly to mean that there would not be a vote on the entire package?

In other words, if any article is approved, then that article would be approved and there would be no further vote on it. Is that correct?

Mr. KASTENMEIER. That is correct. That is correct.

Mr. LOTT. You wouldn't vote on the overall resolution?

Mr. KASTENMEIER. It would not be necessary, as I understand the resolution.

I might further say, in clarification of what the gentleman from Indiana addressed himself to, that the articles of impeachment herein serve as an analogy to a bill debated on the floor of the House. It is a vehicle, but that does not preclude substitutes or amendments or different bills from being offered as substitutes.

Therefore, what we are talking about is a single vehicle, such as a bill offered on the floor for general debate.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, may I just ask if the previous ruling of the Chair that a motion to strike would be in order, even in respect to Mr. Flowers' resolution, at the conclusion of the reading of each separate amendment, or would the chairman rule that the vote even on the motion to strike would have to take place at the conclusion of the reading of all of the articles as amended?

The CHAIRMAN. Well, a motion to strike is a right that every member has under the rules of the House, in order to either amend or strike out a provision at any time.

Mr. RAILSBACK. I don't think, Mr. Chairman, I am making myself clear. As I understood Mr. Flowers' motion, it would really reserve any votes, any votes on the individual articles as amended, until the conclusion of the reading of all of the articles as amended, and in other words, it would have the affect of postponing a vote on each of the individual articles as amended, until the end. And I am wondering if that would not, if the purpose of Mr. Flowers is not to also have a motion to strike take place to each individual article, as amended, at the end, and, in other words, at the same time, which I think personally would be a desirable thing?

But I am not sure from your ruling exactly if a motion to strike is to be treated differently than the vote on the article as amended? Do I make myself a little jumbled—

The CHAIRMAN. No; the Chair understands what the gentleman is inquiring about. And I believe that under the rules of the House, a motion to strike would be in order at any given time.

Mr. RAILSBACK. I see.

The CHAIRMAN. And therefore, I do not believe that under the rules of the House I could properly rule that the motion to strike, which is similar to any other amendment, would be out of order after the amendment, or after the article has been perfected.

Mr. RAILSBACK. Thank you.

Mr. EILBERG. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Eilberg.

Mr. EILBERG. Mr. Chairman, I would like to speak in opposition to the amendment or the substitute offered by the gentleman from Wisconsin.

The gentleman from California earlier mentioned the majority was being unfair to the minority. Here is one member of the majority who, having listened to all of these weeks and months of evidence, is somewhat overwhelmed by the burden of evidence that was presented, and I must confess at this moment I don't know what articles I will be voting for. But, I am prepared to vote for articles of impeachment.

Mr. McCLODY. Would the gentleman yield?

Mr. EILBERG. Not at this time. Now, it seems to me that when the gentleman from California, Mr. Wiggins, says that we are being unfair; to the contrary, I think we are excessively fair. I suspect that there are members not only on our side, but on the Republican side who might vote for articles of impeachment.

But, if they are going to be presented with the torment of voting of an article of impeachment each day and over the weekend, and then subjected to the kinds of pressures that they might be subjected to, it seems to me that the humane or proper way of doing this is disposing of this matter all at one time. And certainly the substitute of the gentleman from Wisconsin does not move in that direction.

Certainly the gentleman's amendment does not move in the direction that the gentleman from Alabama's does, where he has talked to certain members on the majority side trying to find a way that there would be, that would be useful to move in a direction of representing a truly majority point of view.

Now, I don't, I don't know what the gentleman from Alabama is going to vote for. I haven't seen any articles of impeachment. I don't know whether he will vote for impeachment.

But, I say as firmly as I can that we are creating a more difficult situation if we are to accept the position stated by the gentleman from Wisconsin and I am opposed to his substitute.

Mr. McCLODY. Will the gentleman now yield?

Mr. EILBERG. I will be glad to yield.

Mr. McCLODY. Thank you. I would just like to comment that the proposed resolution which was considered at our Republican caucus did contemplate that there would be proposed articles of impeachment before we began the general debate, and it seems to me that whether it is a question of unfairness or not, it seems to me that it is a question of orderly procedure, so that we will know when we begin—

Mr. EILBERG. We are talking about two different things. I say to the gentleman from Illinois that he is talking of having articles of

impeachment before him when we begin debate, and I am addressing myself specifically to the substitute offered by the gentleman from Wisconsin, which I think does not concentrate on the same thing as the gentleman's from Alabama.

Mr. RAILSBACK. Would the gentleman yield?

Mr. McCLODY. You are talking about the time of voting. I don't think that's too important a subject, and I don't think that you are going to agonize over that.

Mr. EILBERG. I will be glad to yield to the gentleman, Mr. Railsback.

Mr. RAILSBACK. I share your opinion, and I say that even though a motion to strike may be injected, the feature of a vote on each individual amendment or each article, I still think that even though we have that motion to strike, if there is one, we will be permitted to do as the gentleman's resolution seeks to do, have a final vote on each individual article as amended at the end, at one time.

Mr. EILBERG. I yield back the balance of my time.

Mr. LATTI. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTI. Sometime before we vote on this Kastenmeier substitute, I have a perfecting amendment to offer.

The CHAIRMAN. I will recognize the gentleman at the appropriate time for that purpose.

Mr. LATTI. Thank you.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. May I state that first of all, replying to the gentleman from California, who uttered such complete surprise and talked about unfairness. I am sure that the gentleman, if you were to inquire, as I stated before, of members of the minority, and I am not going to disclose who had been talked with and who had been consulted, and who was part and parcel of the drafting of this resolution, that is something for those particular members to disclose if they want to. However, I shall not.

But, I must say that again this was like every other matter that has come before this committee, a matter that had been talked about for a period of time and the vehicle that is now before us was that vehicle that we felt would serve the kind of procedure that becomes necessary at this time. It is not unlike legislation that is before the House of Representatives every day, where matters are debated, where certain sections of bills are amended, and no particular vote is taken at that time.

As a matter of fact, at the conclusion of debate, any member may, upon request, ask for a vote on any particular amendment. And this is what is sought to be done here.

The surprise that there are no particular articles which might be before the member's desk at this time is no surprise at all. I think that members of the committee have all been furnished with various proposed articles which will be considered by the members at that time, and the motion of the gentleman from Alabama was appropriate in that it would have allowed that time following debate that a motion would have been presented to the committee, with proposed articles, which would then have addressed themselves specifically for the purpose of being amended.



So, this comports with the rules of the House. It is not unusual procedure. It is the kind of procedure that would have been orderly, that would be orderly, and I, as a member of this committee, intend not to vote for the substitute, but to support the original resolution of the gentleman from Alabama.

Mr. BROOKS. Question.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. The gentleman from Alabama.

Mr. FLOWERS. If I could say this, Mr. Chairman, I would not be adverse, I appreciate the chairman's statement, I would not be adverse to the provision about the articles being before us, I think that anybody, given the time that we now have, which is until tomorrow evening, that I was not aware of when we began this morning, that that would be possible for anybody who is contemplating offering such articles, they could be put on the table, so to speak, at that time, and they ought to be able to.

I would be amenable to such an amendment, if the substitute is defeated and my motion comes back before the committee.

The CHAIRMAN. The question is——

Mr. LATTI. Mr. Chairman?

Mr. BUTLER. Mr. Chairman?

Mr. COHEN. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. COHEN. Would it be in order, Mr. Chairman, to offer an amendment to the substitute of Mr. Kastenmeier?

The CHAIRMAN. Yes, it will be.

Mr. COHEN. And would it be permissible to offer an amendment which has been proposed by Mr. Hutchinson, but not yet offered, either in my name or someone else's. If I offer it, striking Mr. Hutchinson's name with the permission of Mr. Hutchinson, if he does not wish to offer it?

The CHAIRMAN. Well, I would have to advise the gentleman that the Kastenmeier substitute encompasses this.

Mr. BUTLER. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Mr. Chairman, I would like to inquire of the gentleman from Michigan if it is his intention to offer his proposed substitute in the event that the Kastenmeier substitute is defeated? Is it your intention, Mr. Hutchinson, to offer your amendment to the motion in the event that the Kastenmeier substitute is defeated?

Mr. HUTCHINSON. Yes; it is my intention to do that.

But, I would like to say that I also intend to support the Kastenmeier substitute.

Mr. BUTLER. I didn't ask you that.

Mr. HUTCHINSON. Well, I want that clear, I intend to vote for the Kastenmeier substitute.

The CHAIRMAN. For the purposes of an amendment, I recognize the gentleman from Ohio, who has a perfecting amendment.

Mr. LATTI. Thank you, Mr. Chairman.

In order that the Kastenmeier substitute be consistent with House Resolution 803, I would move to strike the period at the end of the last sentence of the resolution after "to" and add the following: "or such resolutions or other recommendations as it deems proper."

Mr. KASTENMEIER. Would the gentleman from Ohio yield?

Mr. LATTI. I will be happy to.

Mr. KASTENMEIER. As the author of the substitute, I would completely agree to the perfecting amendment of the gentleman from Ohio.

Mr. LATTI. Thank you.

The CHAIRMAN. And without objection, the amendment is agreed to.

Mr. BROOKS. Question, Mr. Chairman.

The CHAIRMAN. The question is now on the——

Mr. RAILSBACK. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. RAILSBACK. Am I correct that if the Kastenmeier substitute is voted down, it would then be in order for Mr. Hutchinson to offer his amendment to the Flowers resolution and then we could vote on that, is that correct?

The CHAIRMAN. Yes, it would be.

Mr. BROOKS. Question.

The CHAIRMAN. The question is on the substitute offered by the gentleman from Wisconsin.

All those in favor of the substitute please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

Mr. FLOWERS. I ask for a rollcall.

The CHAIRMAN. The Chair calls for division.

Mr. FLOWERS. Record vote, Mr. Chairman.

The CHAIRMAN. A record vote is demanded. All those in favor of the substitute please vote aye, and all those opposed vote no, and the clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. KASTENMEIER. Aye, by proxy.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. Aye.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 [No response.]  
 The CLERK. Mr. Lott.  
 [No response.]  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.  
 The CLERK. Mr. Latta.



Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. The clerk will report the vote.

The CLERK. Twenty-one members have voted aye, 16 members have voted no.

The CHAIRMAN. And the substitute is agreed to.

I am advised that there is a technical error as a result of the technical amendment which was offered by the gentleman from Ohio. And as soon as we get the drafters, we will draft it appropriately.

Mr. SANDMAN. Mr. Chairman, is it in order to offer an amendment to the substitute?

The CHAIRMAN. The gentleman from Ohio agrees to the—well, will perfect it. The amendment was merely a technical amendment.

Mr. LATTI. You have unanimous consent.

The CHAIRMAN. Without objection is the word.

The question now occurs on the substitute as—

Mr. FISH. Mr. Chairman, before the question is put, Mr. Flowers evidenced that he was agreeable to a change in part of the original motion before us and not to the other part. I wonder is an amendment in order now to—

The CHAIRMAN. No, no further amendment is in order. My understanding is that that portion that is referred to is already included in the substitute none the less.

Now, the question—

Mr. SANDMAN. Mr. Chairman, an amendment to the substitute?

The CHAIRMAN. No, no further amendments are in order.

The question is now on the resolution, the substitute as amended. All those in favor of the resolution, as amended, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it and the resolution will be reported accordingly.

That concludes the business—Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, before we conclude for the day, I would like to exercise my right, as I understand it under the committee procedure, to insert something into the record of the committee regarding evidentiary material that has come to the attention of the staff during the course of this inquiry. And I would ask the chairman that we at least, since we are still bound to some extent by the rules of confidentiality, that we go into executive session so I may propose this for the record.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. I would like to make a request before we adjourn. Would you announce what the schedule is for tomorrow and subsequent to tomorrow?

The CHAIRMAN. Well, the Chair has already circulated notices regarding a meeting which will commence at 7:30 tomorrow night.

Mr. McCLODY. And what is the intention as far as the balance of the week is concerned, Mr. Chairman?

The CHAIRMAN. The Chair intends that so long as the committee is going to meet on this, the Chair intends that we will meet tomorrow night at 7:30 and go to about 10:30, and then start the next morning again at 9:30 and proceed throughout the day and late into the evening, and on Friday we will again meet, and hopefully on Saturday as well, and determine at that time where we are as to the rest of the schedule for the week.

Mr. DENNIS. Mr. Chairman? Mr. Chairman? This, of course, is an imponderable which none of us can weigh at the moment. But, according to rumor, reports, speculation, and so forth, we may get a decision from the Supreme Court of the United States, and I hope that the Chair and everyone will keep in mind that if that should eventuate during the course of our deliberations, it might well be that for one reason or another we might want to even reopen testimony, which would then be available, for instance, or reconsider our options in various ways, which I don't think ought to be ruled out at this time.

The CHAIRMAN. The Chair is well aware of that possibility.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I don't want to take the time of the committee, but I would like to insert in the committee record material received by committee staff during the course of the evidentiary hearing and during their work for our committee. And I would like to know the procedure whereby I can do so, without taking up the time of the committee?

The CHAIRMAN. Well, each member of the committee has the right and has had the right to present to the committee that kind of material, and there already has been accorded to the gentleman from Iowa, who had material which he presented to the committee for purposes of being part of the record, without objection, it is so ordered.

Mr. DENNIS. Mr. Chairman, reserving the right to object, we surely have some right to know what the nature of the material is and just whether it is, in fact, evidentiary of anything before that's done. I mean, I could put in my personal correspondence or anything else under this kind of a procedure.

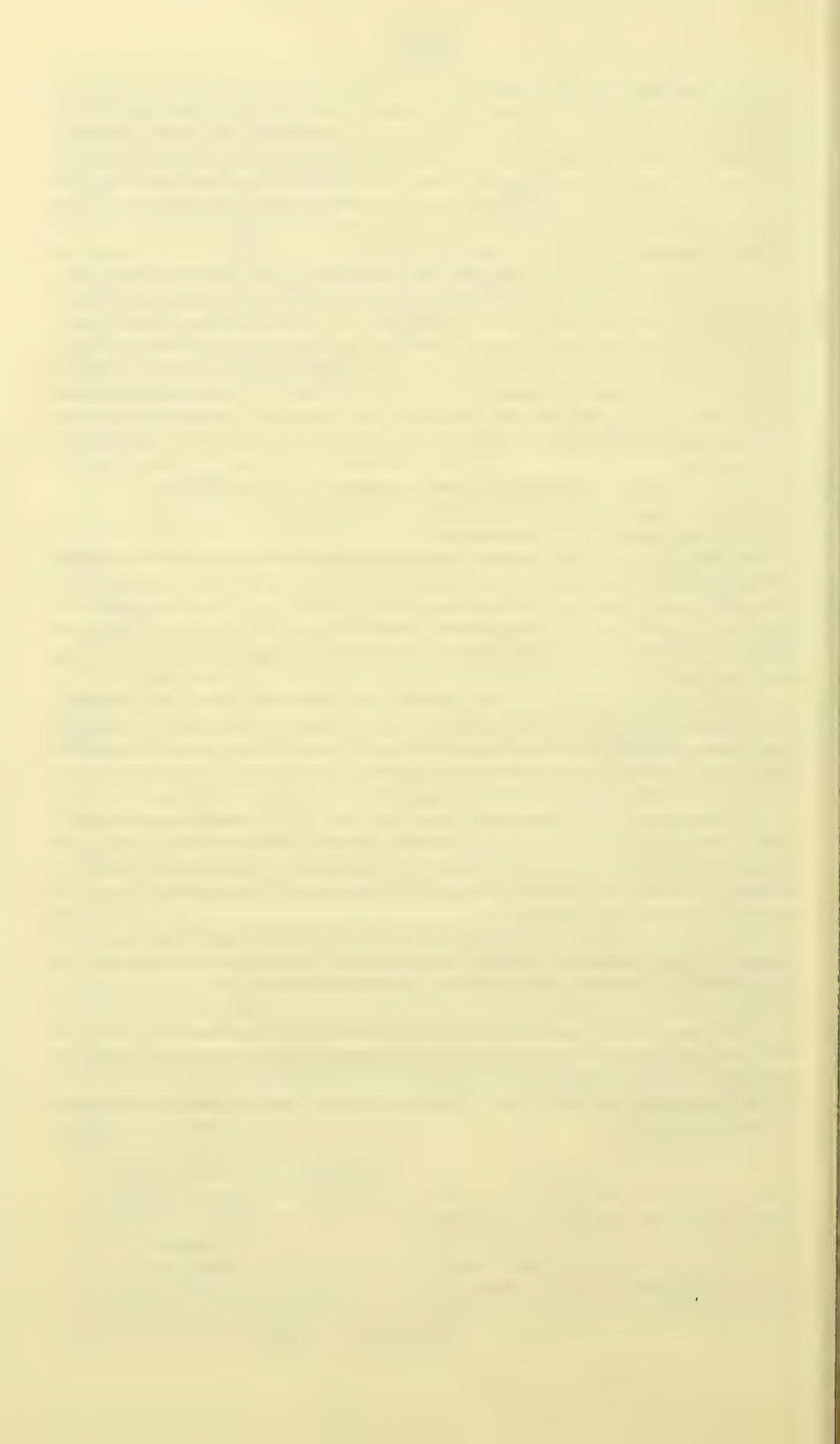
Mr. BUTLER. Mr. Chairman, after we have had an opportunity to examine this material, would it be in order to put it in the record at the meeting, the first of the meeting tomorrow evening?

The CHAIRMAN. No.

Mr. DENNIS. We have to know what we are talking about.

The CHAIRMAN. Well, the Chair will recess this meeting and go into executive session then.

[Whereupon, at 6:43 p.m., the committee was recessed to go into executive session.]





# IMPEACHMENT INQUIRY

## Executive Session

TUESDAY, JULY 23, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to recess, at 6:45 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, special counsel to the minority; Albert E. Jenner, Jr., senior associate special counsel; Bernard W. Nussbaum, senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; William P. Dixon, counsel; Franklin G. Polk, associate counsel; and Michael W. Blommer, associate counsel.

The CHAIRMAN. The committee will come to order. I think this business can be transacted in a moment and, frankly, I had advised the gentlelady from New York that I did not believe that it was necessary since the matter that she refers to is a matter that had been made reference to during the course of the evidentiary hearings.

And in accordance with the rules, I have allowed this to occur on the part of members from the minority. I permitted Mr. Wiley Mayne, who came to me with certain evidentiary material to insert it in the record as well, and this is provided for in the rules of procedure under which we were operating during the time.

So, I will merely ask the——

Mr. DENNIS. Mr. Chairman? I understand that we can insert evidentiary material, but as I understand it, it would only be evidentiary material, and my only interest is in the nature of what it is so that we might make some judgment.

The CHAIRMAN. Well, the gentlelady will explain.

Ms. HOLTZMAN. I want to say first I am very grateful to the chairman and also the committee for their patience in this respect. All I

seek to introduce are the staff notes of an interview with Mr. Kleindienst, a portion of the interview, and I would insert a memorandum to me from Evan Davis of the staff setting forth his handwritten notes of the questions and answers asked of Mr. Kleindienst regarding contacts with the President and the White House during the period of time of his confirmation.

And it is one sheet of paper, and that's all I seek to introduce.

Mr. DENNIS. Well, can we have a look at it and see a copy of it? I thought the hearings were closed for substantial evidence, but if we have got evidence, sure.

Mr. SEIBERLING. Read it.

Ms. HOLTZMAN. This is a memorandum to me from Evan Davis, dated June 18, 1974. I think that the date is incorrect. It should probably be July.

But in any event [reading]:

You have asked what Richard Kleindienst told members of the impeachment inquiry staff about any meeting he may have had with the President during the time his nomination to be Attorney General was pending in the Senate.

Mr. Kleindienst was interviewed by the staff on June 17, 1974. He was asked whether he had any conversations with anyone at the White House during the time he was up for confirmation. He said that he had not, and that his dealings were with John Mitchell and Pat Gray. He was asked if he got any message from the President to the effect that he should hang in there. He answered that maybe there had been something like that, but that he had received no direct message from the President.

He stated that his general recollection was that in March, April, and May, he had no contact of a substantial nature with anyone at the White House. He said he was not even reading the testimony of the other witnesses at his confirmation hearing.

He stated that there were other people at the White House who did not want him to be Attorney General. He said John Mitchell wanted him to be Attorney General, and that because of the pressure from the Senators, the White House had to accept the fact of him as Attorney General.

Mr. DENNIS. Of course, the normal way to do this would be to call Mr. Kleindienst, if it is of any relevance or interest. But, do you see anything wrong?

Mr. WIGGINS. Let it come in.

Mr. DENNIS. I shall not object if the lady wishes to insert it into the record, and I thank her for letting us in on it.

Ms. HOLTZMAN. Thank you.

The CHAIRMAN. The committee is adjourned.

[Whereupon, at 6:50 p.m., the committee was recessed to reconvene subject to the call of the Chair.]

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## APPENDICES

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## APPENDIX I

WORK OF THE IMPEACHMENT INQUIRY STAFF AS OF FEBRUARY 5, 1974

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## I. Organization

*Constitutional and Legal Research.*—Under the general supervision of Joseph Woods, this section is providing the legal support for the office. As legal questions arise, they are referred to this section for research, analysis and report. The major project at this time is the research into the constitutional issue of defining the grounds for impeachment.

*Factual Investigation.*—This work is under the general supervision of Richard L. Cates and Bernard W. Nussbaum, both experienced attorneys with many years of practice. The group is organized into task forces with a task force leader in charge of each. The task forces are collecting and examining all the evidence available—both exculpatory and inculpatory—in the six following categories:

1. Allegations concerning domestic surveillance activities conducted by or at the direction of the White House;
2. Allegations concerning intelligence activities conducted by or at the direction of the White House for the purposes of the Presidential election of 1972;
3. Allegations concerning the Watergate break-in and related activities, including alleged efforts by persons in the White House and others to “cover up” such activities and others;
4. Alleged improprieties in connection with the personal finances of the President;
5. The allegations concerning efforts by the White House to use agencies of the Executive Branch for political purposes, and alleged White House involvement with illegal campaign contributions;
6. The allegations concerning other misconduct that do not fall within one of the foregoing categories, such as the secret bombing of Cambodia, impoundment of funds.

In the paragraphs that follow on page 2, I have endeavored to offer a representative selection of events under investigation. I am listing these examples only because I want to give the Committee a rough idea of our work. I want to emphasize that the events mentioned are merely examples, that the list is by no means exhaustive and that the selection does not represent any judgment by this office concerning the relative gravity of the allegations. Furthermore, the mere fact that we are undertaking investigation into a particular subject should not be interpreted to mean that we think there was any wrongdoing there, or that any prejudgment of the evidence has been made. Charges are not proof. We consider it the duty of this office to search out *all* the facts—those that exonerate as well as those that may implicate—in order to reach a fair and impartial conclusion about the truth of the charges that have been made.

Among the subjects being explored by the task force examining domestic surveillance activities are allegations with respect to (a) the 1969 wiretaps, (b) the Huston Plan, (c) the activities of Messrs. Caulfield and Ulasewicz, (d) the activities of the special investigative unit in the White House, and (e) the activities surrounding the Ellsberg trial.

The task force charged with examining campaign intelligence activities is examining allegations with respect to the following activities, among others: (a) White House "dirty tricks," (b) intelligence activities of the Committee to Re-Elect the President, (c) the Diem cables, (d) the plan to burglarize and to firebomb Brookings Institution, and (e) Operation Sandwedge.

Among the areas under consideration by the task force considering the Watergate break-in and aftermath are allegations with respect to (a) the Liddy plan, (b) the actual break-in at Watergate, (c) the destruction of files, documents and other evidence, (d) payments to the Watergate defendants, (e) the relationship between the CIA and the Watergate investigation, (f) offers of executive clemency to the Watergate defendants, (g) the role of John Dean in the Watergate investigation, (h) the firing of Mr. Cox, and (i) the Presidential tapes.

The task force examining the President's personal finances is examining, among others, allegations concerning (a) tax deductions taken for the gift of Vice Presidential papers, (b) deductions and expenditures attributable to private uses of San Clemente and Key Biscayne, (c) the sale of the New York apartment, (d) the deductions on the Whittier home, (e) the sale of certain Florida lots, (f) the possibility that income should be imputed by virtue of personal use made of Government facilities and services, and (g) improvements to San Clemente and Key Biscayne properties of a non-protective nature at Government expense. In connection with the President's personal finances, the Joint Committee on Taxation is reviewing the President's returns. We have not attempted to duplicate that investigation, nor could we with our present capability.

There are a number of allegations under consideration by the task force considering agency practices. Before listing some of them, I want to emphasize again that these are mere allegations. The fact that an inquiry is being or will be made should not be taken to mean that we think there was necessarily wrongdoing there, nor should it be taken to mean that there has been any prejudgment whatsoever. Some of the allegations under consideration are (a) White House involvement in the solicitation of illegal campaign contributions, (b) allegations involving links between dairy contributions and dairy import quotas and price supports, (c) allegations involving the compilation of an "enemies" list and action taken with various agencies, particularly the IRS, to penalize or harass those listed, (d) allegations involving instructions to the Antitrust Division to accord ITT favorable treatment because of a campaign contribution, and (e) allegations involving a connection between the White House and the events leading to the indictment of Messrs. Mitchell and Stans.

In each task force the attorneys are first collecting and sifting the evidence available in the public domain. Simultaneously, the attorneys are marshaling and digesting the evidence available through various

governmental investigations, whether completed or in progress. The information is then collected in status reports compiled by each attorney on the area of investigation for which he is responsible.

The status reports are designed to assist the inquiry staff in determining exactly what is known and what remains to be proved or disproved. Status reports generally contain a list of all sources researched thus far; a chronology of undisputed facts; a narrative version of these same undisputed facts; identification of key factual disputes; a list of the sources that remain to be examined; comments of the attorney conducting the research, including recommendations for further investigation and requests for legal research; and an appendix containing documents necessary to an understanding of key portions of the report.

On the basis of these reports the investigation will be regularly evaluated and given further direction.

The central file system is intended to support the work of the attorneys. It is operated by a staff of seven. The investigative files are organized to correspond to the six subject areas described in the preceding section: Domestic Surveillance, Campaign Intelligence, Watergate and Aftermath, Personal Finances, Agency Practices, and Other Conduct. There is a separate group of Persons files, as well as a set of files on Constitutional and Legal Analysis.

Material which pertains to more than one category is filed in, or cross-referenced to, the files of all applicable categories.

In addition to material pertaining to specific investigative areas, the library contains the following materials: selected case papers and testimony in Watergate-related litigation; transcripts of relevant congressional hearings and reports; the Weekly Compilation of Presidential Documents from 1969 to the present; the U.S. Code Annotated; several Federal Reporters; and various treatises. Other volumes are borrowed from the various libraries on Capitol Hill as needed.

*Office Management.*—To provide support for the attorneys working in the substantive areas and for the library and file room, Robert A. Shelton, an attorney from Baltimore with experience in office management and security procedures, is in charge of the physical functioning of the office. He is responsible for the layout of the offices, office security and security procedures, secretarial and messenger services, xeroxing, office furniture and equipment, telephone equipment, supplies and the budget. His assistant is Ms. Janet A. Howard, who has had two years experience in office management, five years of experience on Capitol Hill and who joined the staff of the Judiciary-Committee in October, 1973.

Ms. Howard is responsible for organizing and supervising the delivery of secretarial services. With the exception of the senior attorneys, who have their own secretaries, the office secretarial needs are met by a flexible pool arrangement, since the need for services varies in each task force from day to day. In addition, Ms. Howard is responsible for tabulating and responding to all mail addressed to the Judiciary Committee concerning the special inquiry.

Benjamin Marshall, a retired Air Force colonel who specialized for twenty-five years in all phases of security, has been hired to assist



Mr. Shelton with the task of insuring the physical security of the office and designing secure procedures for handling documents, receiving and controlling sensitive material, and controlling the use of the two xerox machines.

Barbara Fletcher (225-8465), who has worked for Members of Congress from her district in North Carolina for the past 6 years, has been hired to serve as liaison between the inquiry staff and the offices of members of the Judiciary Committee, the offices of Members of Congress and the public. All inquiries and requests for information, except from the press, will be routed through her. It is our intention to provide prompt and courteous service to members of the committee and to keep them fully informed as to the progress of the inquiry.

Donald Coppock who has had some experience with the press during his 32-year career with the Immigration and Naturalization Service, has been hired as a public information officer for the Judiciary Committee to handle relations with the press and to provide the press with information in accordance with the policies and directions of the chairman and the Judiciary Committee. The staff has been instructed to keep him abreast of developments and to cooperate fully with him in a manner consistent with the proper discharge of our professional responsibilities.

## II. Breakdown of the Staff and Biographies of Counsel

### *Total impeachment inquiry staff*

Counsel .....	<sup>1</sup> 39
Investigators .....	4
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Research assistants:	
Organization of central files and chronology .....	6
Acquisition of court transcripts and other documents .....	2
Legal research .....	1
Clipping and distribution of newspaper articles and Congressional Record .....	1
Subtotal .....	10
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Public Information Director .....	1
Congressional liaison .....	1
Security Director .....	1
Administration .....	3
Secretaries .....	21
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Clerks:	
Mail .....	4
Employed on part-time basis for mail .....	2
Xerox .....	2
Messenger, part-time Xerox, legal library .....	2
Subtotal .....	10
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Total .....	90

<sup>1</sup> A list of counsel and their resumes follows this page.

# Impeachment Inquiry Staff List

## COUNSEL—39

Fred Altshuler	R. L. Smith McKeithen
Thomas Bell	Robert Murphy
William Paul Bishop	Bernard W. Nussbaum, <i>Senior</i>
Robert Brown	<i>Associate Special Counsel</i>
Richard Cates, <i>Senior Associate</i>	James B. F. Oliphant
<i>Special Counsel</i>	Richard H. Porter
Michael Conway	George Rayborn
Rufus Cormier	James Reum
Edward Lee Dale	Hillary Rodham
John B. Davidson	Robert Sack
Evan Davis	Stephen Sharp
John Doar, <i>Special Counsel</i>	Robert Shelton
Samuel Garrison III, <i>Deputy</i>	Jared Stamell
<i>Minority Counsel</i>	Roscoe Starek
Constantine Gekas	Gary Sutton
Richard Gill	Edward Szukelewicz
Dagmar Hamilton	Robert Trainor
David Hanes	Jean Traylor
Albert E. Jenner, Jr., <i>Minority</i>	William Weld
<i>Counsel</i>	William White
John Kennahan	Joseph Woods, <i>Senior Associate</i>
John Labovitz	<i>Special Counsel</i>



## Résumés

### JOHN M. DOAR

Residence: Brooklyn, New York.

Born: Minneapolis, Minnesota—December 3, 1921.

Family Status: Divorced from Anne Leffingwell Doar. Children: Gael, 21; Michael, 18; Robert, 12; Burke, 10.

Education: Princeton University, B.A., 1944; University of California at Berkeley, LL.B., 1949.

Former Employment:

1969-73, President, Bedford-Stuyvesant D and S Corp., Brooklyn, N.Y.

1968-69, Member, President, Board of Education, City of New York.

1960-67, Department of Justice, Washington, D.C.

1965-67, Assistant Attorney General, Civil Rights Division.

1960-65, First Assistant, Civil Rights Division.

1950-60, Practicing Lawyer, New Richmond, Wisconsin.

Admitted to Bar: 1950, California; 1950, Wisconsin.

### ALBERT E. JENNER, Jr.

Residence: 119 Tudor Place, Kenilworth, Illinois 60043.

Born: Chicago, Illinois—June 20, 1907.

Family Status: Married to Nadine Newhill Jenner; one daughter, Cynthia Lee Jenner.

Education: University of Illinois, Champaign, Illinois, J.D., 1930.

Former Employment: 1933-Present, Partner, Jenner and Block (formerly Thompson, Raymond, Mayer, Jenner and Block), Chicago, Ill.

Admitted to Bar: 1930, Illinois.

### JOSEPH A. WOODS, Jr.

Residence: 127 Bonita Avenue, Piedmont, California 94611.

Born: Decatur, Alabama, March 24, 1925.

Family Status: Married to former Virginia Wallace Steele. Two children: Joanne Evelyn Woods and Calvin Wallace Woods.

Education: University of California at Berkeley, A.B., 1947; University of California at Berkeley, J.D., 1949.

Former Employment: 1950-Present, Donahue, Gallagher, Thomas & Woods, 1417 Central Building, Oakland, California (on leave of absence).

Admitted to Bar: 1950, California.

## SAMUEL GARRISON III

Residence: 6126 Edsall Road, Apartment 102, Alexandria, Virginia 22304.

Born: Roanoke, Virginia, February 21, 1942.

Family Status: Married to former Mary C. Richards of Roanoke. Children: David, 9, and Lisa, 6.

Education: University of Virginia, Charlottesville, Va., B.S., 1963; University of Virginia, LL.B. (now J.D.), 1966.

Former Employment:

1972-73, Special Assistant, Office of the Vice President, U.S. Senate.

1971-72, Associate Minority Counsel, Committee on the Judiciary, U.S. House of Representatives.

1970-71, Commonwealth's Attorney, City of Roanoke, Virginia.

1966-69, Assistant Commonwealth's Attorney, City of Roanoke.

Admitted to Bar: 1966, Virginia.

## RICHARD L. CATES

Residence: 3401 Hammersley Road, Madison, Wisconsin 53711.

Born: New York City, November 22, 1925.

Family Status: Married to Margaret L. Cates. Children: Richard, 22; John, 20; David, 18; Christine, 15; Robert, 13.

Education: Dartmouth College, B.A., 1947; University of Wisconsin, LL.B., 1951.

Former Employment: Lawson & Cates, Madison, Wisconsin (on leave of absence).

Admitted to Bar: 1951, Wisconsin.

## BERNARD W. NUSSBAUM

Residence: 11 Tyler Road, Scarsdale, N.Y.

Born: New York City, March 23, 1937.

Family Status: Married to the former Toby Ann Sheinfeld. Three children.

Education: Columbia College, B.A., 1958; Harvard Law School, LL.B., 1961.

Former Employment:

1966-74, Partner, Wachtell, Lipton, Rosen & Katz, New York, New York.

1962-66, Assistant U.S. Attorney, Southern District of New York.

Admitted to Bar: 1962, New York.

## ROBERT D. SACK

Residence: 32 Sherwood Place, Scarsdale, N.Y. 10583.

Born: Philadelphia, Pennsylvania, October 4, 1939.

Family Status: Married to the former Karen H. Jacobson. Three children.

Education: University of Rochester, A.B., 1960; Columbia University School of Law, LL.B., 1963.

Former Employment:

1964-74, Patterson, Belknap & Webb, One Wall Street, New York, N.Y. (partner since 11/1/70).

1963-64, Law Clerk, Hon. Arthur S. Lane, U.S. District Judge, District of New Jersey.

Admitted to Bar: 1963, New York; 1968, District of Columbia.

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## ROBERT A. SHELTON

Residence: 15 Charles Plaza, Baltimore, Maryland 21201.

Born: Atlanta, Georgia, July 15, 1941.

Family Status: Single.

Education: Oberlin College, A.B., 1963; Harvard Law School, LL.B., 1966.

Former Employment:

1973-Present, Partner: Venable, Baetjer, and Howard, Baltimore, Maryland (on leave of absence).

1967-72, Associate; Venable, Baetjer, and Howard.

1966-67, Law Clerk, Hon. Alexander Harvey II, U.S. District Judge, District of Maryland.

Admitted to Bar: 1966, Maryland.

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## RICHARD H. GILL

Residence: 3140 Southview, Montgomery, Alabama 36106.

Born: Montgomery, Alabama, April 9, 1940.

Family Status: Married to Minnie Lee Gill. One child.

Education: Vanderbilt University, A.B., 1962; University of Virginia, LL.B., 1965.

Former Employment: Hobbs, Copeland, Franco & Screws, 444 South Perry Street, Montgomery, Alabama (on leave of absence).

Admitted to Bar: 1969, Alabama.



## EVAN A. DAVIS

Residence: 20 West 64th Street, New York, New York 10023.

Born: New York, New York, January 18, 1944.

Family Status: Single.

Education: Harvard College, A.B., 1966; Columbia Law School, J.D., 1969.

Former Employment:

1972-74, Chief, Consumer Protection Division, New York City Law Department.

1971-72, General Counsel, New York City Budget Bureau.

1970-71, Law clerk to Justice Potter Stewart, U.S. Supreme Court.

1969-71, Law clerk to Judge Harold Leventhal, U.S. Court of Appeals for the District of Columbia Circuit.

Admitted to Bar: 1970, New York.

## DAVID GORDON HANES

Residence: 5071 Sedgwick Street, NW., Washington, D.C. 20016.

Born: New York City, July 7, 1941.

Family Status: Married to Ann Derby Gulliver. Two children.

Education: Yale University, B.A., 1966; Columbia Law School, J.D., 1969.

Former Employment:

1971-73, Associate; Wilmer, Cutler & Pickering, Washington, D.C.

1970-71, Senior Law Clerk to the Chief Justice.

1969-70, Law Clerk to Mr. Justice Reed (retired), U.S. Supreme Court.

Admitted to Bar: 1970, New York; 1971, District of Columbia.

## RUFUS CORMIER, JR.

Residence: 3390 West Euclid Street, Beaumont, Texas.

Born: Beaumont, Texas, March 2, 1948.

Family Status: Married to Yvonne C. Cormier. No children.

Education: Southern Methodist University, Dallas, Texas, B.A., 1970; Yale University School of Law, J.D., 1973.

Former Employment: Paul, Weiss, Rifkind, Wharton & Garrison, 345 Park Avenue, New York, New York 10022.

### FRED H. ALTSHULER

Residence : 103 G Street, SW., Washington, D.C.

Born : Detroit, Michigan, October 21, 1943.

Family Status : Single.

Education : Stanford University, B.A., 1965 ; University of Chicago Law School, J.D., 1968.

Former Employment :

1969-73, California Rural Legal Assistance, 1212 Market Street, San Francisco, California.

1968-69, Law Clerk to Judge John Godbold, U.S. Court of Appeals, Fifth Circuit, Montgomery, Alabama.

Admitted to Bar : 1969, California.

### THOMAS D. BELL

Residence : RFD 2, New Richmond, Wisconsin.

Born : Boonville, Missouri, January 2, 1946.

Family Status : Single.

Education : Williams College, Williamstown, Mass., B.A., 1968 ; University of Wisconsin, J.D., 1971.

Former Employment :

1972-74, Doar, Drill, Norman & Bakke, Attorneys at Law, New Richmond, Wisconsin (on leave of absence).

1971-72, Law Clerk, Hon. Earl R. Larson, U.S. District Judge, District of Minnesota.

Admitted to Bar : 1971, Wisconsin.

### WILLIAM PAUL BISHOP

Residence : 3544 Ivy Road, Atlanta, Georgia 30342.

Born : Atlanta, Georgia, February 14, 1948.

Family Status : Married to Pamela R. Bishop. No children.

Education : University of Virginia, B.A., 1970 ; University of Georgia, J.D., December 1973.

Former Employment : No prior legal employment except legal research for law professor.

## ROBERT L. BROWN

Residence: 184 North 19th Street, East Orange, New Jersey.

Born: Birmingham, Alabama, July 31, 1947.

Family Status: Single.

Education: Rutgers Law School, Newark, New Jersey, J.D., 1973.

Former Employment:

Instructor of Mathematics, Rutgers University, Newark, New Jersey (while attending Law School).

Corporation Council, City of Albany, Albany, New York (Summer, 1972).

Admitted to Bar: 1973, New Jersey.

## MICHAEL M. CONWAY

Residence: 806 West St. James Street, Arlington Heights, Illinois.

Born: St. Joseph, Missouri, March 11, 1946.

Family Status: Married to Kathleen S. Conway. Two children, ages two years and three months.

Education: Northwestern University, Evanston, Ill., B.S. 1968; Yale University School of Law, New Haven, Conn., J.D., 1973.

Former Employment: Hopkins, Sutter, Owen, Mulroy & Davis, One First National Plaza, Chicago, Illinois 60670 (on leave of absence).

Admitted to Bar: Illinois.

## E. LEE DALE

Residence: 1575 Ivy Street, Denver, Colorado.

Born: Pittsburgh, Pennsylvania, October 10, 1943.

Family Status: Married to Beverlee Dale. One daughter, Kyra.

Education: Westminster College, New Wilmington, Pa., B.A., 1965; Vanderbilt School of Law, J.D., 1968.

Former Employment: Dawson, Nagel, Sherman & Howard, 1900 First National Bank Building, Denver, Colorado 80202.

Admitted to Bar: 1968, Colorado.

## JOHN B. DAVIDSON

Residence: 2440 Lakeview, Chicago, Illinois 60614.

Born: Chicago, Illinois, 1944.

Family Status: Single.

Education:

Harvard University, A.B.

Harvard Business School, M.B.A.

Harvard Law School, J.D., 1972

Former Employment: Louis G. Davidson and Associates, 111 West Washington Street, Chicago, Illinois 60602 (on leave of absence).

Admitted to Bar: 1973, Illinois.



CONSTANTINE J. (CHRIS) GEKAS

Residence: 510 East Columbia Street, Falls Church, Virginia 22046.

Born: Chicago, Illinois, March 1, 1946.

Family Status: Married to Markie Carlson Gekas. No children.

Education: University of Chicago, B.A., 1967; University of Illinois, College of Law, J.D., 1970.

Former Employment:

1973-74, Legislation and Special Projects Section, Criminal Division, Department of Justice.

1972-73, Graduate Law Student, Georgetown Law Center, Washington, D.C.

1971-72, Associate Attorney; Chadwell, Kayser, Ruggles, McGee, Hastings & McKinney; Chicago, Illinois

1969, Law Clerk; Chadwell, Keck, Kayser & Ruggles; Chicago, Illinois

Admitted to Bar: 1971, Illinois; 1973, Virginia.

DAGMAR S. HAMILTON

Residence: 403 Allegro Lane, Austin, Texas 78746.

Born: Philadelphia, Pennsylvania, January 10, 1932.

Family Status: Married to Robert N. Hamilton. Children: Eric, age 17; Randy, age 16; Meredith, age 13.

Education: Swarthmore College, A.B. with High Honors, 1953; University of Chicago Law School, 1954-55; American University Law School, J.D., 1961.

Former Employment:

*Academic*: 1966-73, Lecturer, Department of Government, University of Texas at Austin; 1971, Lecturer, School of Law, University of Arizona.

*Legal*: 1962-73, Editor and Research Associate for Mr. Justice Douglas, U.S. Supreme Court; 1965-66, Lawyer, Civil Rights Division, U.S. Department of Justice.

Admitted to Bar: 1972, Texas.

JOHN EDWARD KENNAHAN

Residence: 433 South Fairfax Street, Alexandria, Virginia 22314.

Born: New York City, May 23, 1924.

Family Status: Married to Miriam Kennahan. Two children.

Education: Georgetown University, B.S., Georgetown University Law Center, LL.B., J.D.

Former Employment:

1969-73, Commonwealth's Attorney, City of Alexandria, Virginia.

1958-69, Private law practice in District of Columbia and Virginia.

1957-58, Legislative Counsel, National Committee on Uniform Laws and Ordinances.

1956-57, Office of Legal Advisor, U.S. Department of State.

Admitted to Bar: Virginia; District of Columbia.

## JOHN R. LABOVITZ

Residence: 5417 Mohican Road, Washington, D.C. 20016.

Born: Washington, D.C., November 18, 1943.

Family Status: Single.

Education: Brown University, A.B., 1965; University of Chicago, J.D., 1969.

Former Employment:

December, 1973, Research Associate, Brookings Institution, Washington, D.C.

1971-73, Affiliated Scholar, American Bar Foundation.

1970, Associate Editor, President's Commission on Campus Unrest.

1970, Staff Associate, John D. Rockefeller, 3d.

1969, Assistant Director, Commission on Foundations and Private Philanthropy.

1965-66, VISTA Volunteer.

Admitted to Bar: 1971, District of Columbia.

## R. L. SMITH McKEITHEN

Residence: 305 West 103rd Street, New York, New York 10025.

Born: February 14, 1944, Albemarle, North Carolina.

Family Status: Single.

Education: Davidson College, Davidson, North Carolina, B.A., 1965; Columbia Law School, J.D., 1971.

Former Employment:

1971-74, Shearman and Sterling, 53 Wall Street, New York, New York 10005.

Summer, 1970, Law Clerk, Townsend and Lewis, 120 Broadway, New York, New York 10005.

Summer, 1969, Claims Adjustor, Building Construction, Liberty Mutual Insurance Company, New York, New York.

Admitted to Bar: New York.

## ROBERT PAUL MURPHY

Residence: 7981 15th Avenue, Adelphi, Maryland 20783.

Born: Lewiston, Maine, May 9, 1946.

Family Status: Married to Ellen Rosenberg Murphy. No children.

Education: Duke University, A.B., 1968; Columbia University School of Law, J.D., 1973.

Former Employment: Attorney-Advisor, United States General Accounting Office.

Admitted to Bar: 1973, District of Columbia.

## JAMES B. F. OLIPHANT

Residence: 1211 35th Street, NW., Washington, D.C. 20007.

Born: New York City, December 11, 1938.

Family Status: Married to Elizabeth Oliphant.

Education:

Williams College, Williamstown, Mass., B.A., 1961.

University of Madrid, Madrid, Spain, 1960.

University of Colorado, Boulder, Colorado, J.D., 1966.

Former Employment:

1973, Chief of Criminal Division, Office of the Attorney General of the Virgin Islands.

1972-73, Chief Counsel, Joint Narcotics Task Force, Government of the Virgin Islands.

1968-72, Organized Crime and Racketeering Section, Criminal Division, U.S. Department of Justice.

1966-68, W. R. Grace and Company, Lima, Peru.

Admitted to Bar: 1966, Colorado.

## RICHARD H. PORTER

Residence: 4534 North Wilson Drive, Shorewood, Wisconsin 53211.

Born: March 25, 1948.

Family Status: Married. No children.

Education: Dartmouth College, A.B., 1969; Yale Law School, J.D., 1972.

Former Employment: 1972-present, Foley & Lardner, 735 North Water Street, Milwaukee, Wisconsin 53202.

Admitted to Bar: 1972, Wisconsin.

## GEORGE G. RAYBORN, JR.

Residence: 2241 Brigden Road, Pasadena, California.

Born: Mississippi, May 10, 1937.

Family Status: Married to Maureen M. Rayborn. One child.

Education: University of Mississippi, B.A., 1960; Rutgers University School of Law, LL.B., 1963.

Former Employment:

1972-74, Federal Public Defender, Los Angeles, California.

1971-72, Private Practice, Gulfport, Mississippi.

1968-71, U.S. Attorney's Office, Los Angeles, California.

1964-67, U.S. Department of Justice.

1963-64, U.S. Department of Agriculture.

Admitted to Bar: 1964, District of Columbia; 1964, Mississippi; 1968, California.



## JAMES M. REUM

Residence: 345 East 81st Street, New York, New York 10028.

Born: November 1, 1946, Oak Park, Illinois.

Family Status: Single.

Education: Harvard College, A.B., 1968; Harvard Law School, J.D., 1972.

Former Employment: 1973-Present, Associate, Davis, Polk & Wardwell, New York, New York.

Admitted to Bar: New York.

## HILLARY RODHAM

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1970, News Secretary and Special Assistant, Office of the Governor-Elect, State of Tennessee.

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1973, Federal Energy Office, Washington, D.C.

1973, Permanent Subcommittee on Investigations of the Government Operations Committee, U.S. Senate.

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1973-74, Served as expert consultant to the Administrative Office of U.S. Courts in connection with analysis of legislative proposals affecting the Federal judiciary.

1951-73, Attorney, U.S. Department of Justice:

1970-74, Chief, Selective Service Unit, Criminal Division (formerly Internal Security Division).

1967-70, Associate Supervisor, Government Operations Section, Criminal Division.

1965-67, Trial Attorney, Trade and Consumers Unit, Government Regulations Section, Criminal Division.

1964-65, Acting Head, Trade and Consumers Unit, Government Regulations Section.

1960-64, Conducted grand jury investigation of the pharmaceutical industry, and the trial of several drug firms on resulting indictments.

1955-60, Senior Attorney, General Crimes Section, Criminal Division.

1951-55, Prepared, on the merits as well as in opposition to certiorari, briefs in criminal and civil cases on appeal in U.S. Supreme Court under the overall direction of the Solicitor General.

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## APPENDIX II

CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT, REPORT  
BY THE STAFF OF THE IMPEACHMENT INQUIRY

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## I. Introduction

The Constitution deals with the subject of impeachment and conviction at six places. The scope of the power is set out in Article II, Section 4:

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Other provisions deal with procedures and consequences. Article I, Section 2 states:

The House of Representatives . . . shall have the sole Power of Impeachment.

Similarly, Article I, Section 3, describes the Senate's role:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

The same section limits the consequences of judgment in cases of impeachment:

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Of lesser significance, although mentioning the subject, are: Article II, Section 2:

The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Article III, Section 2:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . . .

Before November 15, 1973 a number of Resolutions calling for the impeachment of President Richard M. Nixon had been introduced in the House of Representatives, and had been referred by the Speaker of the House, Hon. Carl Albert, to the Committee on the Judiciary for consideration, investigation and report. On November 15, anticipating the magnitude of the Committee's task, the House voted

funds to enable the Committee to carry out its assignment and in that regard to select an inquiry staff to assist the Committee.

On February 6, 1974, the House of Representatives by a vote of 410 to 4 "authorized and directed" the Committee on the Judiciary "to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America."

To implement the authorization (H. Res. 803) the House also provided that "For the purpose of making such investigation, the committee is authorized to require . . . by subpoena or otherwise . . . the attendance and testimony of any person . . . and . . . the production of such things; and . . . by interrogatory, the furnishing of such information, as it deems necessary to such investigation."

This was but the second time in the history of the United States that the House of Representatives resolved to investigate the possibility of impeachment of a President. Some 107 years earlier the House had investigated whether President Andrew Johnson should be impeached. Understandably, little attention or thought has been given the subject of the presidential impeachment process during the intervening years. The Inquiry Staff, at the request of the Judiciary Committee, has prepared this memorandum on constitutional grounds for presidential impeachment. As the factual investigation progresses, it will become possible to state more specifically the constitutional, legal and conceptual framework within which the staff and the Committee work.

Delicate issues of basic constitutional law are involved. Those issues cannot be defined in detail in advance of full investigation of the facts. The Supreme Court of the United States does not reach out, in the abstract, to rule on the constitutionality of statutes or of conduct. Cases must be brought and adjudicated on particular facts in terms of the Constitution. Similarly, the House does not engage in abstract, advisory or hypothetical debates about the precise nature of conduct that calls for the exercise of its constitutional powers; rather, it must await full development of the facts and understanding of the events to which those facts relate.

What is said here does not reflect any prejudgment of the facts or any opinion or inference respecting the allegations being investigated. This memorandum is written before completion of the full and fair factual investigation the House directed be undertaken. It is intended to be a review of the precedents and available interpretive materials, seeking general principles to guide the Committee.

This memorandum offers no fixed standards for determining whether grounds for impeachment exist. The framers did not write a fixed standard. Instead they adopted from English history a standard sufficiently general and flexible to meet future circumstances and events, the nature and character of which they could not foresee.

The House has set in motion an unusual constitutional process, conferred solely upon it by the Constitution, by directing the Judiciary Committee to "investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach." This action was not partisan. It was supported by the overwhelming majority of both political parties. Nor was it intended to obstruct or weaken the presidency. It was supported



by Members firmly committed to the need for a strong presidency and a healthy executive branch of our government. The House of Representatives acted out of a clear sense of constitutional duty to resolve issues of a kind that more familiar constitutional processes are unable to resolve.

To assist the Committee in working toward that resolution, this memorandum reports upon the history, purpose and meaning of the constitutional phrase, "Treason, Bribery, or other high Crimes and Misdemeanors."

## II. The Historical Origins of Impeachment

The Constitution provides that the President "... shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." The framers could have written simply "or other crimes"—as indeed they did in the provision for extradition of criminal offenders from one state to another. They did not do that. If they had meant simply to denote seriousness, they could have done so directly. They did not do that either. They adopted instead a unique phrase used for centuries in English parliamentary impeachments, for the meaning of which one must look to history.

The origins and use of impeachment in England, the circumstances under which impeachment became a part of the American constitutional system, and the American experience with impeachment are the best available sources for developing an understanding of the function of impeachment and the circumstances in which it may become appropriate in relation to the presidency.

### A. THE ENGLISH PARLIAMENTARY PRACTICE

Alexander Hamilton wrote, in No. 65 of *The Federalist*, that Great Britain had served as "the model from which [impeachment] has been borrowed." Accordingly, its history in England is useful to an understanding of the purpose and scope of impeachment in the United States.

Parliament developed the impeachment process as a means to exercise some measure of control over the power of the King. An impeachment proceeding in England was a direct method of bringing to account the King's ministers and favorites—men who might otherwise have been beyond reach. Impeachment, at least in its early history, has been called "the most powerful weapon in the political armoury, short of civil war."<sup>1</sup> It played a continuing role in the struggles between King and Parliament that resulted in the formation of the unwritten English constitution. In this respect impeachment was one of the tools used by the English Parliament to create more responsive and responsible government and to redress imbalances when they occurred.<sup>2</sup>

The long struggle by Parliament to assert legal restraints over the unbridled will of the King ultimately reached a climax with the execution of Charles I in 1649 and the establishment of the Commonwealth under Oliver Cromwell. In the course of that struggle, Parliament sought to exert restraints over the King by removing those of his ministers who most effectively advanced the King's absolutist pur-

<sup>1</sup> Plucknett, "Presidential Address" reproduced in 3 *Transactions, Royal Historical Society*, 5th Series, 145 (1952).

<sup>2</sup> See generally C. Roberts, *The Growth of Responsible Government in Stuart England* (Cambridge 1966).

poses. Chief among them was Thomas Wentworth, Earl of Strafford. The House of Commons impeached him in 1640. As with earlier impeachments, the thrust of the charge was damage to the state.<sup>3</sup> The first article of impeachment alleged<sup>4</sup>

That he . . . hath traiterously endeavored to subvert the Fundamental Laws and Government of the Realms . . . and in stead thereof, to introduce Arbitrary and Tyrannical Government against Law. . . .

The other articles against Strafford included charges ranging from the allegation that he had assumed regal power and exercised it tyrannically to the charge that he had subverted the rights of Parliament.<sup>5</sup>

Characteristically, impeachment was used in individual cases to reach offenses, as perceived by Parliament, against the system of government. The charges, variously denominated "treason," "high treason," "misdemeanors," "malversations," and "high Crimes and Misdemeanors," thus included allegations of misconduct as various as the kings (or their ministers) were ingenious in devising means of expanding royal power.

At the time of the Constitutional Convention the phrase "high Crimes and Misdemeanors" had been in use for over 400 years in impeachment proceedings in Parliament.<sup>6</sup> It first appears in 1386 in the impeachment of the King's Chancellor, Michael de la Pole, Earl of Suffolk.<sup>7</sup> Some of the charges may have involved common law offenses.<sup>8</sup> Others plainly did not: de la Pole was charged with breaking a promise he made to the full Parliament to execute in connection with a parliamentary ordinance the advice of a committee of nine lords regarding the improvement of the estate of the King and the realm: "this was not done, and it was the fault of himself as he was then chief officer." He was also charged with failing to expend a sum that Parliament had directed be used to ransom the town of Ghent, because of which "the said town was lost."<sup>9</sup>

<sup>3</sup> Strafford was charged with treason, a term defined in 1352 by the Statute of Treasons, 25 Edw. 3, stat. 5, c. 2 (1352). The particular charges against him presumably would have been within the compass of the general, or "salvo," clause of that statute, but did not fall within any of the enumerated acts of treason. Strafford rested his defense in part on that failure: his eloquence on the question of retrospective treasons ("Beware you do not awake these sleeping lions, by the searching out some neglected moth-eaten records, they may one day tear you and your posterity in pieces: it was your ancestors' care to chain them up within the barricadoes of statutes: be not you ambitious to be more skilful and curious than your forefathers in the art of killing." *Celebrated Trials* 518 (Phila. 1837) may have dissuaded the Commons from bringing the trial to a vote in the House of Lords; instead they caused his execution by bill of attainder.

<sup>4</sup> J. Rushworth, *The Tryal of Thomas Earl of Strafford*, in 8 Historical Collections 8 (1686).

<sup>5</sup> Rushworth, *supra* n. 4, at 8-9. R. Berger, *Impeachment: The Constitutional Problems* 30 (1973), states that the impeachment of Strafford "... constitutes a great watershed in English constitutional history of which the Founders were aware."

<sup>6</sup> See generally A. Simpson, *A Treatise on Federal Impeachments* 81-190 (Philadelphia, 1916) (Appendix of English Impeachment Trials); M. V. Clarke, "The Origin of Impeachment" in *Oxford Essays in Medieval History* 164 (Oxford, 1934). Reading and analyzing the early history of English impeachments is complicated by the paucity and ambiguity of the records. The analysis that follows in this section has been drawn largely from the scholarship of others, checked against the original records where possible.

The basis for what became the impeachment procedure apparently originated in 1341, when the King and Parliament alike accepted the principle that the King's ministers were to answer in Parliament for their misdeeds. C. Roberts, *supra* n. 2, at 7. Offenses against Magna Carta, for example, were falling for technicalities in the ordinary courts, and therefore Parliament provided that offenders against Magna Carta be declared in Parliament and judged by their peers. Clarke, *supra*, at 173.

<sup>7</sup> Simpson, *supra* n. 6, at 86; Berger, *supra* n. 5, at 61; Adams and Stevens, *Select Documents of English Constitutional History* 148 (London 1927).

<sup>8</sup> For example, de la Pole was charged with purchasing property of great value from the King while using his position as Chancellor to have the lands appraised at less than they were worth, all in violation of his oath, in deceit of the King and in neglect of the need of the realm. Adams and Stevens, *supra* n. 7, at 148.

<sup>9</sup> Adams and Stevens, *supra* n. 7, at 148-150.



The phrase does not reappear in impeachment proceedings until 1450. In that year articles of impeachment against William de la Pole, Duke of Suffolk (a descendant of Michael), charged him with several acts of high treason, but also with "high Crimes and Misdemeanors,"<sup>10</sup> including such various offenses as "advising the King to grant liberties and privileges to certain persons to the hindrance of the due execution of the laws," "procuring offices for persons who were unfit, and unworthy of them" and "squandering away the public treasure."<sup>11</sup>

Impeachment was used frequently during the reigns of James I (1603-1625) and Charles I (1628-1649). During the period from 1620 to 1649 over 100 impeachments were voted by the House of Commons.<sup>12</sup> Some of these impeachments charged high treason, as in the case of Strafford; others charged high crimes and misdemeanors. The latter included both statutory offenses, particularly with respect to the Crown monopolies, and non-statutory offenses. For example, Sir Henry Yelverton, the King's Attorney General, was impeached in 1621 of high crimes and misdemeanors in that he failed to prosecute after commencing suits, and exercised authority before it was properly vested in him.<sup>13</sup>

There were no impeachments during the Commonwealth (1649-1660). Following the end of the Commonwealth and the Restoration of Charles II (1660-1685) a more powerful Parliament expanded somewhat the scope of "high Crimes and Misdemeanors" by impeaching officers of the Crown for such things as negligent discharge of duties<sup>14</sup> and improprieties in office.<sup>15</sup>

The phrase "high Crimes and Misdemeanors" appears in nearly all of the comparatively few impeachments that occurred in the eighteenth century. Many of the charges involved abuse of official power or trust. For example, Edward, Earl of Oxford, was charged in 1701 with "violation of his duty and trust" in that, while a member of the King's privy council, he took advantage of the ready access he had to the King to secure various royal rents and revenues for his own use, thereby greatly diminishing the revenues of the crown and subjecting the people of England to "grievous taxes."<sup>16</sup> Oxford was also charged with procuring a naval commission for William Kidd, "known to be a person of ill fame and reputation," and ordering him "to pursue the intended voyage, in which Kidd did commit diverse piracies . . . being thereto encouraged through hopes of being protected by the high station and interest of Oxford, in violation of the law of nations, and the interruption and discouragement of the trade of England."<sup>17</sup>

<sup>10</sup> 4 Hatsell 67 (Shannon, Ireland, 1971, reprint of London 1796, 1818).

<sup>11</sup> 4 Hatsell, *supra* n. 10, at 67, charges 2, 6 and 12.

<sup>12</sup> The Long Parliament (1640-48) alone impeached 98 persons. Roberts, *supra* n. 2, at 133.

<sup>13</sup> 2 Howell *State Trials* 1135, 1136-37 (charges 1, 2 and 6). See generally Simpson, *supra* n. 6, at 91-127; Berger, *supra* n. 5, at 67-73.

<sup>14</sup> Peter Pett, Commissioner of the Navy, was charged in 1668 with negligent preparation for an invasion by the Dutch, and negligent loss of a ship. The latter charge was predicated on alleged willful neglect in failing to insure that the ship was brought to a mooring. 6 Howell *State Trials* 865, 866-67 (charges 1, 5).

<sup>15</sup> Chief Justice Scroggs was charged in 1680, among other things, with browbeating witnesses and commenting on their credibility, and with cursing and drinking to excess, thereby bringing "the highest scandal on the public justice of the kingdom." 8 Howell *State Trials* 197, 200 (charges 7, 8).

<sup>16</sup> Simpson, *supra* n. 6, at 144.

<sup>17</sup> Simpson, *supra* n. 6, at 144.

The impeachment of Warren Hastings, first attempted in 1786 and concluded in 1795,<sup>18</sup> is particularly important because contemporaneous with the American Convention debates. Hastings was the first Governor-General of India. The articles indicate that Hastings was being charged with high crimes and misdemeanors in the form of gross maladministration, corruption in office, and cruelty toward the people of India.<sup>19</sup>

Two points emerge from the 400 years of English parliamentary experience with the phrase "high Crimes and Misdemeanors." First, the particular allegations of misconduct alleged damage to the state in such forms as misapplication of funds, abuse of official power, neglect of duty, encroachment on Parliament's prerogatives, corruption, and betrayal of trust.<sup>20</sup> Second, the phrase "high Crimes and Misdemeanors" was confined to parliamentary impeachments; it had no roots in the ordinary criminal law,<sup>21</sup> and the particular allegations of misconduct under that heading were not necessarily limited to common law or statutory derelictions or crimes.

### B. THE INTENTION OF THE FRAMERS

The debates on impeachment at the Constitutional Convention in Philadelphia focus principally on its applicability to the President. The framers sought to create a responsible though strong executive; they hoped, in the words of Elbridge Gerry of Massachusetts, that "the maxim would never be adopted here that the chief Magistrate could do [no] wrong."<sup>22</sup> Impeachment was to be one of the central elements of executive responsibility in the framework of the new government as they conceived it.

The constitutional grounds for impeachment of the President received little direct attention in the Convention: the phrase "other high Crimes and Misdemeanors" was ultimately added to "Treason" and "Bribery" with virtually no debate. There is evidence, however, that the framers were aware of the technical meaning the phrase had acquired in English impeachments.

Ratification by nine states was required to convert the Constitution from a proposed plan of government to the supreme law of the land. The public debates in the state ratifying conventions offer evidence of the contemporaneous understanding of the Constitution equally as compelling as the secret deliberations of the delegates in Philadelphia. That evidence, together with the evidence found in the debates during the First Congress on the power of the President to discharge an executive officer appointed with the advice and consent of the Senate,

<sup>18</sup> See generally Marshall, *The Impeachment of Warren Hastings* (Oxford, 1965).

<sup>19</sup> Of the original resolutions proposed by Edmund Burke in 1786 and accepted by the House as articles of impeachment in 1787, both criminal and non-criminal offenses appear. The fourth article, for example, charging that Hastings had confiscated the landed income of the Begums of Oudh, was described by Pitt as that of all others that bore the strongest marks of criminality. Marshall, *supra*, n. 19, at 53.

The third article, on the other hand, known as the Benares charge, claimed that circumstances imposed upon the Governor-General a duty to conduct himself "on the most distinguished principles of good faith, equity, moderation and mildness." Instead, continued the charge, Hastings provoked a revolt in Benares, resulting in "the arrest of the rajah, three revolutions in the country and great loss, whereby the said Hastings is guilty of a high crime and misdemeanor in the destruction of the country aforesaid." The Commons accepted this article, voting 119-79 that these were grounds for impeachment. Simpson, *supra* n. 6, at 168-170; Marshall, *supra* n. 19, at xv, 46.

<sup>20</sup> See, e.g., Berger, *supra* n. 5, at 70-71.

<sup>21</sup> Berger, *supra* n. 5, at 62.

<sup>22</sup> *The Records of the Federal Convention* 66 (M. Farrand ed. 1911) (brackets in original). Hereafter cited as Farrand.

shows that the framers intended impeachment to be a constitutional safeguard of the public trust, the powers of government conferred upon the President and other civil officers, and the division of powers among the legislative, judicial and executive departments.

## 1. THE PURPOSE OF THE IMPEACHMENT REMEDY

Among the weaknesses of the Articles of Confederation apparent to the delegates to the Constitutional Convention was that they provided for a purely legislative form of government whose ministers were subservient to Congress. One of the first decisions of the delegates was that their new plan should include a separate executive, judiciary, and legislature.<sup>23</sup> However, the framers sought to avoid the creation of a too-powerful executive. The Revolution had been fought against the tyranny of a king and his council, and the framers sought to build in safeguards against executive abuse and usurpation of power. They explicitly rejected a plural executive, despite arguments that they were creating "the foetus of monarchy,"<sup>24</sup> because a single person would give the most responsibility to the office.<sup>25</sup> For the same reason, they rejected proposals for a council of advice or privy council to the executive.<sup>25a</sup>

The provision for a single executive was vigorously defended at the time of the state ratifying conventions as a protection against executive tyranny and wrongdoing. Alexander Hamilton made the most carefully reasoned argument in *Federalist* No. 70, one of the series of *Federalist Papers* prepared to advocate the ratification of the Constitution by the State of New York. Hamilton criticized both a plural executive and a council because they tend "to conceal faults and destroy responsibility." A plural executive, he wrote, deprives the people of "the two greatest securities they can have for the faithful

<sup>23</sup> 1 Farrand 322.

<sup>24</sup> 1 Farrand 66.

<sup>25</sup> This argument was made by James Wilson of Pennsylvania, who also said that he preferred a single executive "as giving most energy dispatch and responsibility to the office." 1 Farrand 65.

<sup>25a</sup> A number of suggestions for a Council to the President were made during the Convention. Only one was voted on, and it was rejected three states to eight. This proposal, by George Mason, called for a privy council of six members—two each from the eastern, middle, and southern states—selected by the Senate for staggered six-year terms, with two leaving office every two years. 2 Farrand 537, 542.

Gouverneur Morris and Charles Pinckney, both of whom spoke in opposition to other proposals for a council, suggested a privy council composed of the Chief Justice and the heads of executive departments. Their proposal, however, expressly provided that the President "shall in all cases exercise his own judgment, and either conform to [the] opinions [of the council] or not as he may think proper." Each officer who was a member of the council would "be responsible for his opinion on the affairs relating to his particular Department" and liable to impeachment and removal from office "for neglect of duty malversation, or corruption." 2 Farrand 342-44.

Morris and Pinckney's proposal was referred to the Committee on Detail, which reported a provision for an expanded privy council including the President of the Senate and the Speaker of the House. The council's duty was to advise the President "in matters respecting the execution of his Office, which he shall think proper to lay before them: But their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt." 2 Farrand 367. This provision was never brought to a vote or debated in the Convention.

Opponents of a council argued that it would lessen executive responsibility. A council, said James Wilson, "oftener serves to cover, than prevent malpractices." 1 Farrand 97. And the Committee of Eleven, consisting of one delegate from each state, to which proposals for a council to the President as well as other questions of policy were referred, decided against a council, on the ground that the President, "by persuading his Council—to concur in his wrong measures, would acquire their protection for them." 2 Farrand 542.

Some delegates thought the responsibility of the President to be "chimerical": Gunning Bedford because "he could not be punished for mistakes." 2 Farrand 43; Elbridge Gerry, with respect to nomination for offices, because the President could "always plead ignorance." 2 Farrand 539. Benjamin Franklin favored a Council because it "would not only be a check on a bad President but a relief to a good one." He asserted that the delegates had "too much . . . fear [of] cabals in appointments by a number," and "too much confidence in those of single persons." Experience, he said, showed that "caprice, the intrigues of favorites & mistresses, &c." were "the means most prevalent in monarchies." 2 Farrand 542.



exercise of any delegated power"—"[r]esponsibility . . . to censure and to punishment." When censure is divided and responsibility uncertain, "the restraints of public opinion . . . lose their efficacy" and "the opportunity of discovering with facility and clearness the misconduct of the persons [the public] trust, in order either to their removal from office, or to their actual punishment in cases which admit of it" is lost.<sup>26</sup> A council, too, "would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself."<sup>27</sup> It is, Hamilton concluded, "far more safe [that] there should be a single object for the jealousy and watchfulness of the people; . . . all multiplication of the Executive is rather dangerous than friendly to liberty."<sup>28</sup>

James Iredell, who played a leading role in the North Carolina ratifying convention and later became a justice of the Supreme Court, said that under the proposed Constitution the President "is of a very different nature from a monarch. He is to be . . . personally responsible for any abuse of the great trust reposed in him."<sup>29</sup> In the same convention, William R. Davie, who had been a delegate in Philadelphia, explained that the "predominant principle" on which the Convention had provided for a single executive was "the more obvious responsibility of one person." When there was but one man, said Davie, "the public were never at a loss" to fix the blame.<sup>30</sup>

James Wilson, in the Pennsylvania convention, described the security furnished by a single executive as one of its "very important advantages":

The executive power is better to be trusted when it has no screen. Sir, we have a responsibility in the person of our President; he cannot act improperly, and hide either his negligence or inattention; he cannot roll upon any other person the weight of his criminality; no appointment can take place without his nomination; and he is responsible for every nomination he makes. . . . Add to all this, that officer is placed high, and is possessed of power far from being contemptible, yet not a *single privilege* is annexed to his character; far from being above the laws, he is amenable to them in his private character as a citizen, and in his public character by *impeachment*.<sup>31</sup>

As Wilson's statement suggests, the impeachability of the President was considered to be an important element of his responsibility.

<sup>26</sup> *The Federalist* No. 70, at 459-61 (Modern Library ed.) (A. Hamilton) (hereinafter cited as *Federalist*). The "multiplication of the Executive," Hamilton wrote, "adds to the difficulty of detection":

The circumstances which may have led to any national miscarriage of misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.

If there should be "collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties?" *Id.* at 460.

<sup>27</sup> *Federalist* No. 70 at 461. Hamilton stated:

A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad, and are almost always a cloak to his faults. *Id.* at 462-63.

<sup>28</sup> *Federalist* No. 70 at 462.

<sup>29</sup> J. Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 74 (reprint of 2d ed.) (hereinafter cited as Elliot.)

<sup>30</sup> Elliot 104.

<sup>31</sup> 2 Elliot 480 (emphasis in original).

Impeachment had been included in the proposals before the Constitutional Convention from its beginning.<sup>32</sup> A specific provision, making the executive removable from office on impeachment and conviction for "mal-practice or neglect of duty," was unanimously adopted even before it was decided that the executive would be a single person.<sup>33</sup>

The only major debate on the desirability of impeachment occurred when it was moved that the provision for impeachment be dropped, a motion that was defeated by a vote of eight states to two.<sup>34</sup>

One of the arguments made against the impeachability of the executive was that he "would periodically be tried for his behavior by his electors" and "ought to be subject to no intermediate trial, by impeachment."<sup>35</sup> Another was that the executive could "do no criminal act without Coadjutors [assistants] who may be punished."<sup>36</sup> Without his subordinates, it was asserted, the executive "can do nothing of consequence," and they would "be amenable by impeachment to the public Justice."<sup>37</sup>

This latter argument was made by Gouverneur Morris of Pennsylvania, who abandoned it during the course of the debate, concluding that the executive should be impeachable.<sup>38</sup> Before Morris changed his position, however, George Mason had replied to his earlier argument:

Shall any man be above justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors.<sup>39</sup>

James Madison of Virginia argued in favor of impeachment stating that some provision was "indispensible" to defend the community against "the incapacity, negligence or perfidy of the chief Magistrate." With a single executive, Madison argued, unlike a legislature whose collective nature provided security, "loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic."<sup>40</sup> Benjamin Franklin supported

<sup>32</sup> The Virginia Plan, fifteen resolutions proposed by Edmund Randolph at the beginning of the Convention, served as the basis of its early deliberations. The ninth resolution gave the national judiciary jurisdiction over "impeachments of any National officers." 1 Farrand 22.

<sup>33</sup> 1 Farrand 88. Just before the adoption of this provision, a proposal to make the executive removable from office by the legislature upon request of a majority of the state legislatures had been overwhelmingly rejected. *Id.* 87. In the course of debate on this proposal, it was suggested that the legislature "should have power to remove the Executive at pleasure"—a suggestion that was promptly criticized as making him "the mere creature of the Legislature" in violation of "the fundamental principle of good Government," and was never formally proposed to the Convention. *Id.* 85-86.

<sup>34</sup> 2 Farrand 64, 69.

<sup>35</sup> 2 Farrand 67 (Rufus King). Similarly, Gouverneur Morris contended that if an executive charged with a criminal act were reelected, "that will be sufficient proof of his innocence." *Id.* 64.

It was also argued in opposition to the impeachment provision, that the executive should not be impeachable "whilst in office"—an apparent allusion to the constitutions of Virginia and Delaware, which then provided that the governor (unlike other officers) could be impeached only after he left office. *Id.* See 7 Thorpe, *The Federal and State Constitutions* 3818 (1909) and 1 *id.* 566. In response to this position, it was argued that corrupt elections would result, as an incumbent sought to keep his office in order to maintain his immunity from impeachment. He will "spare no efforts or no means whatever to get himself reelected," contended William R. Davie of North Carolina. 2 Farrand 64. George Mason asserted that the danger of corrupting electors "furnished a peculiar reason in favor of impeachments whilst in office": "Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?" *Id.* 65.

<sup>36</sup> 2 Farrand 64.

<sup>37</sup> 2 Farrand 54.

<sup>38</sup> "This Magistrate is not the King but the prime-Minister. The people are the King." 2 Farrand 69.

<sup>39</sup> 2 Farrand 65.

<sup>40</sup> 2 Farrand 65-66.

impeachment as "favorable to the executive"; where it was not available and the chief magistrate had "rendered himself obnoxious," recourse was had to assassination. The Constitution should provide for the "regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused."<sup>41</sup> Edmund Randolph also defended "the propriety of impeachments":

The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided it will be irregularly inflicted by tumults & insurrections.<sup>42</sup>

The one argument made by the opponents of impeachment to which no direct response was made during the debate was that the executive would be too dependent on the legislature—that, as Charles Pinckney put it, the legislature would hold impeachment "as a rod over the Executive and by that means effectually destroy his independence."<sup>43</sup> That issue, which involved the forum for trying impeachments and the mode of electing the executive, troubled the Convention until its closing days. Throughout its deliberations on ways to avoid executive subservience to the legislature, however, the Convention never reconsidered its early decision to make the executive removable through the process of impeachment.<sup>44</sup>

## 2. ADOPTION OF "HIGH CRIMES AND MISDEMEANORS"

Briefly, and late in the Convention, the framers addressed the question how to describe the grounds for impeachment consistent with its intended function. They did so only after the mode of the President's election was settled in a way that did not make him (in the words of James Wilson) "the Minion of the Senate."<sup>45</sup>

The draft of the Constitution then before the Convention provided for his removal upon impeachment and conviction for "treason or bribery." George Mason objected that these grounds were too limited:

Why is the provision restrained to Treason & bribery only?

Treason as defined in the Constitution will not reach many great and dangerous offenses. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined—As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments.<sup>46</sup>

Mason then moved to add the word "maladministration" to the other two grounds. Maladministration was a term in use in six of the thirteen state constitutions as a ground for impeachment, including Mason's home state of Virginia.<sup>47</sup>

When James Madison objected that "so vague a term will be

<sup>41</sup> 2 Farrand 65.

<sup>42</sup> 2 Farrand 67.

<sup>43</sup> 2 Farrand 66.

<sup>44</sup> See Appendix B for a chronological account of the Convention's deliberations on impeachment and related issues.

<sup>45</sup> 2 Farrand 523.

<sup>46</sup> 2 Farrand 550.

<sup>47</sup> The grounds for impeachment of the Governor of Virginia were "mal-administration, corruption, or other means, by which the safety of the State may be endangered." 7 Thorpe, *The Federal and State Constitution* 3818 (1909).



equivalent to a tenure during pleasure of the Senate," Mason withdrew "maladministration" and substituted "high crimes and misdemeanors agst. the State," which was adopted eight states to three, apparently with no further debate.<sup>48</sup>

That the framers were familiar with English parliamentary impeachment proceedings is clear. The impeachment of Warren Hastings, Governor-General of India, for high crimes and misdemeanors was voted just a few weeks before the beginning of the Constitutional Convention and George Mason referred to it in the debates.<sup>49</sup> Hamilton, in the *Federalist* No. 65, referred to Great Britain as "the model from which [impeachment] has been borrowed." Furthermore, the framers were well-educated men. Many were also lawyers. Of these, at least nine had studied law in England.<sup>50</sup>

The Convention had earlier demonstrated its familiarity with the term "high misdemeanor."<sup>51</sup> A draft constitution had used "high misdemeanor" in its provision for the extradition of offenders from one state to another.<sup>52</sup> The Convention, apparently unanimously struck "high misdemeanor" and inserted "other crime," "in order to comprehend all proper cases: it being doubtful whether 'high misdemeanor' had not a technical meaning too limited."<sup>53</sup>

The "technical meaning" referred to is the parliamentary use of the term "high misdeameanor." Blackstone's *Commentaries on the Laws of England*—a work cited by delegates in other portions of the Convention's deliberations and which Madison later described (in the Virginia ratifying convention) as "a book which is in every man's hand"<sup>54</sup>—included "high misdemeanors" as one term for positive offenses "against the king and government." The "first and principal" high misdemeanor, according to Blackstone, was "mal-administration of such high officers, as are in public trust and employment," usually punished by the method of parliamentary impeachment.<sup>55</sup>

"High Crimes and Misdemeanors" has traditionally been considered a "term of art," like such other constitutional phrases as "levying war" and "due process." The Supreme Court has held that such phrases must be construed, not according to modern usage, but according to what the framers meant when they adopted them.<sup>56</sup> Chief Justice Marshall wrote of another such phrase:

<sup>48</sup> 2 Farrand 550. Mason's wording was unanimously changed later the same day from "agst. the State" to "against the United States" in order to avoid ambiguity. This phrase was later dropped in the final draft of the Constitution prepared by the Committee on Style and Revision, which was charged with arranging and improving the language of the articles adopted by the Convention without altering its substance.

<sup>49</sup> *Id.*

<sup>50</sup> R. Berger, *Impeachment: The Constitutional Problems* 87, 89 and accompanying notes (1973).

<sup>51</sup> As a technical term, a "high" crime signified a crime against the system of government, not merely a serious crime. "This element of injury to the commonwealth—that is, to the state itself and to its constitution—was historically the criterion for distinguishing a 'high' crime or misdemeanor from an ordinary one. The distinction goes back to the ancient law of treason, which differentiated 'high' from 'petit' treason." Bestor, Book Review, 49 Wash. L. Rev. 255, 263-64 (1973). See 4 W. Blackstone, *Commentaries*\* 75.

<sup>52</sup> The provision (article XV of Committee draft of the Committee on Detail) originally read: "Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence." 2 Farrand 187-88.

This clause was virtually identical with the extradition clause contained in article IV of the Articles of Confederation, which referred to "any Person guilty of, or charged with treason, felony, or other high misdemeanor in any state. . . ."

<sup>53</sup> 2 Farrand 443.

<sup>54</sup> 3 Elliott 501.

<sup>55</sup> 4 Blackstone's *Commentaries*\* 121 (emphasis omitted).

<sup>56</sup> See *Murray v. Hoboken Land Co.*, 52 U.S. (18 How.) 272 (1856); *Davidson v. New Orleans*, 96 U.S. 97 (1878); *Smith v. Alabama*, 124 U.S. 465 (1888).

It is a technical term. It is used in a very old statute of that country whose language is our language, and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our constitution in the sense which had been affixed to it by those from whom we borrowed it.<sup>57</sup>

### 3. GROUNDS FOR IMPEACHMENT

Mason's suggestion to add "maladministration," Madison's objection to it as "vague," and Mason's substitution of "high crimes and misdemeanors agst the State" are the only comments in the Philadelphia convention specifically directed to the constitutional language describing the grounds for impeachment of the President. Mason's objection to limiting the grounds to treason and bribery was that treason would "not reach many great and dangerous offences" including "[a]ttempts to subvert the Constitution."<sup>58</sup> His willingness to substitute "high Crimes and Misdemeanors," especially given his apparent familiarity with the English use of the term as evidenced by his reference to the Warren Hastings impeachment, suggests that he believed "high Crimes and Misdemeanors" would cover the offenses about which he was concerned.

Contemporaneous comments on the scope of impeachment are persuasive as to the intention of the framers. In *Federalist* No. 65, Alexander Hamilton described the subject of impeachment as

those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.<sup>59</sup>

Comments in the state ratifying conventions also suggest that those who adopted the Constitution viewed impeachment as a remedy for usurpation or abuse of power or serious breach of trust. Thus, Charles Cotesworth Pinckney of South Carolina stated that the impeachment power of the House reaches "those who behave amiss, or betray their public trust."<sup>60</sup> Edmund Randolph said in the Virginia convention that the President may be impeached if he "misbehaves."<sup>61</sup> He later cited the example of the President's receipt of presents or emoluments from a foreign power in violation of the constitutional prohibition of Article I, section 9.<sup>62</sup> In the same convention George Mason argued that the President might use his pardoning power to "pardon crimes which were advised by himself" or, before indictment or conviction, "to stop inquiry and prevent detection." James Madison responded:

[I]f the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will

<sup>57</sup> *United States v. Burr*, 25 Fed. Cas. 1, 159 (No. 14, 693) (C.C.D. Va. 1807).

<sup>58</sup> 2 Farrand 550.

<sup>59</sup> *The Federalist* No. 65 at 423-24 (Modern Library ed.) (A. Hamilton) (emphasis in original).

<sup>60</sup> 4 Elliot 281.

<sup>61</sup> 3 Elliot 201.

<sup>62</sup> 3 Elliot 486.

shelter him, the House of Representatives can impeach him; they can remove him if found guilty. . . .<sup>63</sup>

In reply to the suggestion that the President could summon the Senators of only a few states to ratify a treaty, Madison said,

Were the President to commit any thing so atrocious . . . he would be impeached and convicted, as a majority of the states would be affected by his misdemeanor.<sup>64</sup>

Edmund Randolph referred to the checks upon the President :

It has too often happened that powers delegated for the purpose of promoting the happiness of a community have been perverted to the advancement of the personal emoluments of the agents of the people; but the powers of the President are too well guarded and checked to warrant this illiberal aspersion.<sup>65</sup>

Randolph also asserted, however, that impeachment would not reach errors of judgment: "No man ever thought of impeaching a man for an opinion. It would be impossible to discover whether the error in opinion resulted from a wilful mistake of the heart, or an involuntary fault of the head."<sup>66</sup>

James Iredell made a similar distinction in the North Carolina convention, and on the basis of this principle said, "I suppose the only instances, in which the President would be liable to impeachment, would be where he had received a bribe, or had acted from some corrupt motive or other."<sup>67</sup> But he went on to argue that the President

must certainly be punishable for giving false information to the Senate. He is to regulate all intercourse with foreign powers, and it is his duty to impart to the Senate every material intelligence he receives. If it should appear that he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them.—in this case, I ask whether, upon an impeachment for a misdemeanor upon such an account, the Senate would probably favor him.<sup>68</sup>

In short, the framers who discussed impeachment in the state ratifying conventions, as well as other delegates who favored the Constitution,<sup>69</sup> implied that it reached offenses against the government, and

<sup>63</sup> 3 Elliot 497-98. Madison went on to say, contrary to his position in the Philadelphia convention, that the President could be suspended when suspected, and his powers would devolve on the Vice President, who could likewise be suspended until impeached and convicted, if he were also suspected. *Id.* 498.

<sup>64</sup> 3 Elliot 500. John Rutledge of South Carolina made the same point, asking "whether gentlemen seriously could suppose that a President, who has a character at stake, would be such a fool and knave as to join with ten others (two-thirds of a minimal quorum of the Senate) to tear up liberty by the roots, when a full Senate were competent to impeach him." 4 Elliot 268.

<sup>65</sup> 3 Elliot 117.

<sup>66</sup> 3 Elliot 401.

<sup>67</sup> 4 Elliot 126.

<sup>68</sup> 4 Elliot 127.

<sup>69</sup> For example, Wilson Nicholas in the Virginia convention asserted that the President "is personally amenable for his mal-administration" through impeachment. 3 Elliot 17. George Nicholas in the same convention referred to the President's impeachability if he "deviates from his duty." *Id.* 240. Archibald MacLaine in the South Carolina convention also referred to the President's impeachability for "any maladministration in his office." 4 Elliot 47; and Reverend Samuel Stillman of Massachusetts referred to his impeachability for "malconduct," asking, "With such a prospect, who will dare to abuse the powers vested in him by the people?" 2 Elliot 169.



especially abuses of constitutional duties. The opponents did not argue that the grounds for impeachment had been limited to criminal offenses.

An extensive discussion of the scope of the impeachment power occurred in the House of Representatives in the First Session of the First Congress. The House was debating the power of the President to remove the head of an executive department appointed by him with the advice and consent of the Senate, an issue on which it ultimately adopted the position, urged primarily by James Madison, that the Constitution vested the power exclusively in the President. The discussion in the House lends support to the view that the framers intended the impeachment power to reach failure of the President to discharge the responsibilities of his office.<sup>70</sup>

Madison argued during the debate that the President would be subject to impeachment for "the wanton removal of meritorious officers."<sup>71</sup> He also contended that the power of the President unilaterally to remove subordinates was "absolutely necessary" because "it will make him in a peculiar manner, responsible for [the] conduct" of executive officers. It would, Madison said,

subject him to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses.<sup>72</sup>

Elbridge Gerry of Massachusetts, who had also been a framer though he had opposed the ratification of the Constitution, disagreed with Madison's contentions about the impeachability of the President. He could not be impeached for dismissing a good officer, Gerry said, because he would be "doing an act which the Legislature has submitted to his discretion."<sup>73</sup> And he should not be held responsible for the acts of subordinate officers, who were themselves subject to impeachment and should bear their own responsibility.<sup>74</sup>

Another framer, Abraham Baldwin of Georgia, who supported Madison's position on the power to remove subordinates, spoke of the President's impeachability for failure to perform the duties of the executive. If, said Baldwin, the President "in a fit of passion" removed "all the good officers of the Government" and the Senate were unable to choose qualified successors, the consequence would be that the President "would be obliged to do the duties himself; or, if he did not, we would impeach him, and turn him out of office, as he had done others."<sup>75</sup>

<sup>70</sup> Chief Justice Taft wrote with reference to the removal power debate in the opinion for the Court in *Myers v. United States*, that constitutional decisions of the First Congress "have always been regarded, as they should be regarded, as of the greatest weight in the interpretation of that fundamental instrument." 272 U.S. 52, 174-75 (1926).

<sup>71</sup> 1 Annals of Cong. 498 (1789).

<sup>72</sup> *Id.* 372-73.

<sup>73</sup> *Id.* 502.

<sup>74</sup> *Id.* 535-36. Gerry also implied, perhaps rhetorically, that a violation of the Constitution was grounds for impeachment. If, he said, the Constitution failed to include provision for removal of executive officers, an attempt by the legislature to cure the omission would be an attempt to amend the Constitution. But the Constitution provided procedures for its amendment, and "an attempt to amend it in any other way may be a high crime or misdemeanor, or perhaps something worse." *Id.* 503.

<sup>75</sup> *Id.* John Vining of Delaware commented:

"The President. What are his duties? To see the laws faithfully executed; if he does not do this effectually, he is responsible. To whom? To the people. Have they the means of calling him to account, and punishing him for neglect? They have secured it in the Constitution, by impeachment, to be presented by their immediate representatives; if they fail here, they have another check when the time of election comes round." *Id.* 572.

Those who asserted that the President has exclusive removal power suggested that it was necessary because impeachment, as Elias Boudinot of New Jersey contended, is "intended as a punishment for a crime, and not intended as the ordinary means of re-arranging the Departments."<sup>76</sup> Boudinot suggested that disability resulting from sickness or accident "would not furnish any good ground for impeachment; it could not be laid as treason or bribery, nor perhaps as a high crime or misdemeanor."<sup>77</sup> Fisher Ames of Massachusetts argued for the President's removal power because "mere intention [to do a mischief] would not be cause of impeachment" and "there may be numerous causes for removal which do not amount to a crime."<sup>78</sup> Later in the same speech Ames suggested that impeachment was available if an officer "misbehaves"<sup>79</sup> and for "mal-conduct."<sup>80</sup>

One further piece of contemporary evidence is provided by the *Lectures on Law* delivered by James Wilson of Pennsylvania in 1790 and 1791. Wilson described impeachments in the United States as "confined to political characters, to political crimes and misdemeanors, and to political punishment."<sup>81</sup> And, he said:

The doctrine of impeachments is of high import in the constitutions of free states. On one hand, the most powerful magistrates should be amenable to the law: on the other hand, elevated characters should not be sacrificed merely on account of their elevation. No one should be secure while he violates the constitution and the laws: every one should be secure while he observes them.<sup>82</sup>

From the comments of the framers and their contemporaries, the remarks of the delegates to the state ratifying conventions, and the removal power debate in the First Congress, it is apparent that the scope of impeachment was not viewed narrowly. It was intended to provide a check on the President through impeachment, but not to make him dependent on the unbridled will of the Congress.

Impeachment, as Justice Joseph Story wrote in his *Commentaries on the Constitution* in 1833, applies to offenses of "a political character":

Not but that crimes of a strictly legal character fall within the scope of the power . . .; but that it has a more enlarged operation, and reaches, what are aptly termed political offenses, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office. These are so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and

<sup>76</sup> *Id.* 375.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* 474.

<sup>79</sup> *Id.* 475.

<sup>80</sup> *Id.* 477. The proponents of the President's removal power were careful to preserve impeachment as a supplementary method of removing executive officials. Madison said impeachment will reach a subordinate "whose bad actions may be connived at or overlooked by the President." *Id.* 372. Abraham Baldwin said:

"The Constitution provides for—what? That no bad man should come into office. . . . But suppose that one such could be got in, he can be got out again in despite of the President. We can impeach him, and drag him from his place . . . ." *Id.* 558.

<sup>81</sup> Wilson, *Lectures on Law*, in 1 *The Works of James Wilson* 426 (R. McCloskey ed. 1967).

<sup>82</sup> *Id.* 425.

duty. They must be judged of by the habits and rules and principles of diplomacy, or departmental operations and arrangements, of parliamentary practice, of executive customs and negotiations of foreign as well as domestic political movements; and in short, by a great variety of circumstances, as well those which aggravate as those which extenuate or justify the offensive acts which do not properly belong to the judicial character in the ordinary administration of justice, and are far removed from the reach of municipal jurisprudence.<sup>83</sup>

### C. THE AMERICAN IMPEACHMENT CASES

Thirteen officers have been impeached by the House since 1787: one President, one cabinet officer, one United States Senator, and ten Federal judges.<sup>84</sup> In addition there have been numerous resolutions and investigations in the House not resulting in impeachment. However, the action of the House in declining to impeach an officer is not particularly illuminating. The reasons for failing to impeach are generally not stated, and may have rested upon a failure of proof, legal insufficiency of the grounds, political judgment, the press of legislative business, or the closeness of the expiration of the session of Congress. On the other hand, when the House has voted to impeach an officer, a majority of the Members necessarily have concluded that the conduct alleged constituted grounds for impeachment.<sup>85</sup>

Does Article III, Section 1 of the Constitution, which states that judges "shall hold their Offices during good Behaviour," limit the relevance of the ten impeachments of judges with respect to presidential impeachment standards as has been argued by some? It does not. The argument is that "good behavior" implies an additional ground for impeachment of judges not applicable to other civil officers. However, the only impeachment provision discussed in the Convention and included in the Constitution is Article II, Section 4, which by its express terms, applies to all civil officers, including judges, and defines impeachment offenses as "Treason, Bribery, and other high Crimes and Misdemeanors."

In any event, the interpretation of the "good behavior" clause adopted by the House has not been made clear in any of the judicial impeachment cases. Whichever view is taken, the judicial impeachments have involved an assessment of the conduct of the officer in terms of the constitutional duties of his office. In this respect, the impeachments of judges are consistent with the three impeachments of non-judicial officers.

Each of the thirteen American impeachments involved charges of misconduct incompatible with the official position of the officeholder.

<sup>83</sup> 1 *J. Story Commentaries on the Constitution of the United States*, § 764, at 559 (5th ed. 1905).

<sup>84</sup> Eleven of these officers were tried in the Senate. Articles of impeachment were presented to the Senate against a twelfth (Judge English), but he resigned shortly before the trial. The thirteenth (Judge Delahay) resigned before articles could be drawn.

See Appendix B for a brief synopsis of each impeachment.

<sup>85</sup> Only four of the thirteen impeachments—all involving judges—have resulted in conviction in the Senate and removal from office. While conviction and removal show that the Senate agreed with the House that the charges on which conviction occurred stated legally sufficient grounds for impeachment, acquittals offer no guidance on this question, as they may have resulted from a failure of proof, other factors, or a determination by more than one third of the Senators (as in the Blount and Belknap impeachments) that trial or conviction was inappropriate for want of jurisdiction.



This conduct falls into three broad categories: (1) exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government; (2) behaving in a manner grossly incompatible with the proper function and purpose of the office; and (3) employing the power of the office for an improper purpose or for personal gain.<sup>86</sup>

#### 1. EXCEEDING THE POWERS OF THE OFFICE IN DEROGATION OF THOSE OF ANOTHER BRANCH OF GOVERNMENT

The first American impeachment, of Senator William Blount in 1797, was based on allegations that Blount attempted to incite the Creek and Cherokee Indians to attack the Spanish settlers of Florida and Louisiana, in order to capture the territory for the British. Blount was charged with engaging in a conspiracy to compromise the neutrality of the United States, in disregard of the constitutional provisions for conduct of foreign affairs. He was also charged, in effect, with attempting to oust the President's lawful appointee as principal agent for Indian affairs and replace him with a rival, thereby intruding upon the President's supervision of the executive branch.<sup>87</sup>

The impeachment of President Andrew Johnson in 1868 also rested on allegations that he had exceeded the power of his office and had failed to respect the prerogatives of Congress. The Johnson impeachment grew out of a bitter partisan struggle over the implementation of Reconstruction in the South following the Civil War. Johnson was charged with violation of the Tenure of Office Act, which purported to take away the President's authority to remove members of his own cabinet and specifically provided that violation would be a "high misdemeanor," as well as a crime. Believing the Act unconstitutional, Johnson removed Secretary of War Edwin M. Stanton and was impeached three days later.

Nine articles of impeachment were originally voted against Johnson, all dealing with his removal of Stanton and the appointment of a successor without the advice and consent of the Senate. The first article, for example, charged that President Johnson,

unmindful of the high duties of this office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and laws of the United States, order in writing the removal of Edwin M. Stanton from the office of Secretary for the Department of War.<sup>88</sup>

Two more articles were adopted by the House the following day. Article Ten charged that Johnson, "unmindful of the high duties of his office, and the dignity and proprieties thereof," had made inflammatory speeches that attempted to ridicule and disgrace the Congress.<sup>89</sup> Article Eleven charged him with attempts to prevent the

<sup>86</sup> A procedural note may be useful. The House votes both a resolution of impeachment against an officer and articles of impeachment containing the specific charges that will be brought to trial in the Senate. Except for the impeachment of Judge Delahay, the discussion of grounds here is based on the formal articles.

<sup>87</sup> After Blount had been impeached by the House, but before trial of the impeachment, the Senate expelled him for "having been guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator."

<sup>88</sup> Article one further alleged that Johnson's removal of Stanton was unlawful because the Senate had earlier rejected Johnson's previous suspension of him.

<sup>89</sup> Quoting from speeches which Johnson had made in Washington, D.C., Cleveland, Ohio

execution of the Tenure of Office Act, an Army appropriations act, and a Reconstruction act designed by Congress "for the more efficient government of the rebel States." On its face, this article involved statutory violations, but it also reflected the underlying challenge to all of Johnson's post-war policies.

The removal of Stanton was more a catalyst for the impeachment than a fundamental cause.<sup>90</sup> The issue between the President and Congress was which of them should have the constitutional—and ultimately even the military—power to make and enforce Reconstruction policy in the South. The Johnson impeachment, like the British impeachments of great ministers, involved issues of state going to the heart of the constitutional division of executive and legislative power.

## 2. BEHAVING IN A MANNER GROSSLY INCOMPATIBLE WITH THE PROPER FUNCTION AND PURPOSE OF THE OFFICE

Judge John Pickering was impeached in 1803, largely for intoxication on the bench.<sup>91</sup> Three of the articles alleged errors in a trial in violation of his trust and duty as a judge: the fourth charged that Pickering, "being a man of loose morals and intemperate habits," had appeared on the bench during the trial in a state of total intoxication and had used profane language. Seventy-three years later another judge, Mark Delahay, was impeached for intoxication both on and off the bench but resigned before articles of impeachment were adopted.

A similar concern with conduct incompatible with the proper exercise of judicial office appears in the decision of the House to impeach Associate Supreme Court Justice Samuel Chase in 1804. The House alleged that Justice Chase had permitted his partisan views to influence his conduct of two trials held while he was conducting circuit court several years earlier. The first involved a Pennsylvania farmer who had led a rebellion against a Federal tax collector in 1789 and was later charged with treason. The articles of impeachment alleged that "unmindful of the solemn duties of his office, and contrary to the sacred obligation" of his oath, Chase "did conduct himself in a manner highly arbitrary, oppressive, and unjust," citing procedural rulings against the defense.

Similar language appeared in articles relating to the trial of a Virginia printer indicted under the Sedition Act of 1798. Specific examples of Chase's bias were alleged, and his conduct was characterized as "an indecent solicitude . . . for the conviction of the accused, unbecoming even a public prosecutor but highly disgraceful to the character of a judge, as it was subversive of justice." The eighth article charged that Chase, "disregarding the duties . . . of his judicial character. . . did . . . prevent his official right and duty to address the grand jury" by delivering "an intemperate and inflammatory political harangue." His conduct was alleged to be a serious breach of his duty

and St. Louis, Missouri, article ten pronounced these speeches "condemnable in any, [and] peculiarly indecent and unbecoming in the Chief Magistrate of the United States." By means of these speeches, the article concluded, Johnson had brought the high office of the presidency "into contempt, ridicule, and disgrace, to the great scandal of all good citizens."

<sup>90</sup> The Judiciary Committee had reported a resolution of impeachment three months earlier charging President Johnson in its report with omissions of duty, usurpations of power, and violations of his oath of office, the laws and the Constitution in his conflict of Reconstruction. The House voted down the resolution.

<sup>91</sup> The issue of Pickering's insanity was raised at trial in the Senate, but was not discussed by the House when it voted to impeach or to adopt articles of impeachment.

to judge impartially and to reflect on his competence to continue to exercise the office.

Judge West H. Humphreys was impeached in 1862 on charges that he joined the Confederacy without resigning his federal judgeship.<sup>92</sup> Judicial prejudice against Union supporters was also alleged.

Judicial favoritism and failure to give impartial consideration to cases before him were also among the allegations in the impeachment of Judge George W. English in 1926. The final article charged that his favoritism had created distrust of the disinterestedness of his official actions and destroyed public confidence in his court.<sup>93</sup>

### 3. EMPLOYING THE POWER OF THE OFFICE FOR AN IMPROPER PURPOSE OR PERSONAL GAIN

Two types of official conduct for improper purposes have been alleged in past impeachments. The first type involves vindictive use of their office by federal judges; the second, the use of office for personal gain.

Judge James H. Peck was impeached in 1826 for charging with contempt a lawyer who had publicly criticized one of his decisions, imprisoning him, and ordering his disbarment for 18 months. The House debated whether this single instance of vindictive abuse of power was sufficient to impeach, and decided that it was, alleging that the conduct was unjust, arbitrary, and beyond the scope of Peck's duty.

Vindictive use of power also constituted an element of the charges in two other impeachments. Judge George W. English was charged in 1926, among other things, with threatening to jail a local newspaper editor for printing a critical editorial and with summoning local officials into court in a non-existent case to harangue them. Some of the articles in the impeachment of Judge Charles Swayne (1903) alleged that he maliciously and unlawfully imprisoned two lawyers and a litigant for contempt.

Six impeachments have alleged the use of office for personal gain or the appearance of financial impropriety while in office. Secretary of War William W. Belknap was impeached in 1876 of high crimes and misdemeanors for conduct that probably constituted bribery and certainly involved the use of his office for highly improper purposes—receiving substantial annual payments through an intermediary in return for his appointing a particular post trader at a frontier military post in Indian territory.

The impeachments of Judges Charles Swayne (1903), Robert W. Archbald (1912), George W. English (1926), Harold Louderback (1932) and Halsted L. Ritter (1936) each involved charges of the use of office for direct or indirect personal monetary gain.<sup>94</sup> In the Archbald and Ritter cases, a number of allegations of improper conduct were combined in a single, final article, as well as being charged separately.

<sup>92</sup> Although some of the language in the articles suggested treason, only high crimes and misdemeanors were alleged, and Humphrey's offenses were characterized as a failure to discharge his judicial duties.

<sup>93</sup> Some of the allegations against Judges Harold Louderback (1932) and Halsted Ritter (1936) also involved judicial favoritism affecting public confidence in their courts.

<sup>94</sup> Judge Swayne was charged with falsifying expense accounts and using a railroad car in the possession of a receiver he had appointed. Judge Archbald was charged with using his office to secure business favors from litigants and potential litigants before his court. Judges English, Louderback, and Ritter were charged with misusing their power to appoint and set the fees of bankruptcy receivers for personal profit.



In drawing up articles of impeachment, the House has placed little emphasis on criminal conduct. Less than one-third of the eighty-three articles the House has adopted have explicitly charged the violation of a criminal statute or used the word "criminal" or "crime" to describe the conduct alleged, and ten of the articles that do were those involving the Tenure of Office Act in the impeachment of President Andrew Johnson. The House has not always used the technical language of the criminal law even when the conduct alleged fairly clearly constituted a criminal offense, as in the Humphreys and Belknap impeachments. Moreover, a number of articles, even though they may have alleged that the conduct was unlawful, do not seem to state criminal conduct—including Article Ten against President Andrew Johnson (charging inflammatory speeches), and some of the charges against all of the judges except Humphreys.

Much more common in the articles are allegations that the officer has violated his duties or his oath or seriously undermined public confidence in his ability to perform his official functions. Recitals that a judge has brought his court or the judicial system into disrepute are commonplace. In the impeachment of President Johnson, nine of the articles allege that he acted "unmindful of the high duties of his office and of his oath of office," and several specifically refer to his constitutional duty to take care that the laws be faithfully executed.

The formal language of an article of impeachment, however, is less significant than the nature of the allegations that it contains. All have involved charges of conduct incompatible with continued performance of the office; some have explicitly rested upon a "course of conduct" or have combined disparate charges in a single, final article. Some of the individual articles seem to have alleged conduct that, taken alone, would not have been considered serious, such as two articles in the impeachment of Justice Chase that merely alleged procedural errors at trial. In the early impeachments, the articles were not prepared until after impeachment had been voted by the House, and it seems probable that the decision to impeach was made on the basis of all the allegations viewed as a whole, rather than each separate charge. Unlike the Senate, which votes separately on each article after trial, and where conviction on but one article is required for removal from office, the House appears to have considered the individual offenses less significant than what they said together about the conduct of the official in the performance of his duties.

Two tendencies should be avoided in interpreting the American impeachments. The first is to dismiss them too readily because most have involved judges. The second is to make too much of them. They do not all fit neatly and logically into categories. That, however, is in keeping with the nature of the remedy. It is intended to reach a broad variety of conduct by officers that is both serious and incompatible with the duties of the office.

Past impeachments are not precedents to be read with an eye for an article of impeachment identical to allegations that may be currently under consideration. The American impeachment cases demonstrate a common theme useful in determining whether grounds for impeachment exist—that the grounds are derived from understanding the nature, functions and duties of the office.

### III. The Criminality Issue

The phrase "high Crimes and Misdemeanors" may connote "criminality" to some. This likely is the predicate for some of the contentions that only an indictable crime can constitute impeachable conduct. Other advocates of an indictable-offense requirement would establish a criminal standard of impeachable conduct because that standard is definite, can be known in advance and reflects a contemporary legal view of what conduct should be punished. A requirement of criminality would require resort to familiar criminal laws and concepts to serve as standards in the impeachment process. Furthermore, this would pose problems concerning the applicability of standards of proof and the like pertaining to the trial of crimes.<sup>1</sup>

The central issue raised by these concerns is whether requiring an indictable offense as an essential element of impeachable conduct is consistent with the purposes and intent of the framers in establishing the impeachment power and in setting a constitutional standard for the exercise of that power. This issue must be considered in light of the historical evidence of the framers' intent.<sup>2</sup> It is also useful to consider whether the purposes of impeachment and criminal law are such that indictable offenses can, consistent with the Constitution, be an essential element of grounds for impeachment. The impeachment of a President must occur only for reasons at least as pressing as those needs of government that give rise to the creation of criminal offenses. But this does not mean that the various elements of proof, defenses, and other substantive concepts surrounding an indictable offense control the impeachment process. Nor does it mean that state or federal criminal codes are necessarily the place to turn to provide a standard under the United States Constitution. Impeachment is a constitutional remedy. The framers intended that the impeachment language they employed should reflect the grave misconduct that so injures or abuses our constitutional institutions and form of government as to justify impeachment.

This view is supported by the historical evidence of the constitutional meaning of the words "high Crimes and Misdemeanors." That evidence is set out above.<sup>3</sup> It establishes that the phrase "high Crimes and Misdemeanors"—which over a period of centuries evolved into the English standard of impeachable conduct—has a special historical meaning different from the ordinary meaning of the terms "crimes" and "misdemeanors."<sup>4</sup> "High misdemeanors" referred to a

<sup>1</sup> See A. Simpson, *A Treatise on Federal Impeachments* 28-29 (1916). It has also been argued that because Treason and Bribery are crimes, "other high Crimes and Misdemeanors" must refer to crimes under the *eiusdem generis* rule of construction. But *eiusdem generis* merely requires a unifying principle. The question here is whether that principle is criminality or rather conduct subversive of our constitutional institutions and form of government.

<sup>2</sup> The rule of construction against redundancy indicates an intent not to require criminality. If criminality is required, the word "Misdemeanors" would add nothing to "high Crimes."

<sup>3</sup> See part II.B. *supra*, pp. 7-17.

<sup>4</sup> See part II.B.2. *supra*, pp. 11-13.

category of offenses that subverted the system of government. Since the fourteenth century the phrase “high Crimes and Misdemeanors” had been used in English impeachment cases to charge officials with a wide range of criminal and non-criminal offenses against the institutions and fundamental principles of English government.<sup>5</sup>

There is evidence that the framers were aware of this special, non-criminal meaning of the phrase “high Crimes and Misdemeanors” in the English law of impeachment.<sup>6</sup> Not only did Hamilton acknowledge Great Britain as “the model from which [impeachment] has been borrowed,” but George Mason referred in the debates to the impeachment of Warren Hastings, then pending before Parliament. Indeed, Mason, who proposed the phrase “high Crimes and Misdemeanors,” expressly stated his intent to encompass “[a]ttempts to subvert the Constitution.”<sup>7</sup>

The published records of the state ratifying conventions do not reveal an intention to limit the grounds of impeachment to criminal offenses.<sup>8</sup> James Iredell said in the North Carolina debates on ratification:

. . . , the person convicted is further liable to a trial at common law, and may receive such common-law punishment as belongs to a description of such offences if it be punishable by that law.<sup>9</sup>

Likewise, George Nicholas of Virginia distinguished disqualification to hold office from conviction for criminal conduct:

If [the President] deviates from his duty, he is responsible to his constituents. . . . He will be absolutely disqualified to hold any place of profit, honor, or trust, and liable to further punishment if he has committed such high crimes as are punishable at common law.<sup>10</sup>

The post-convention statements and writings of Alexander Hamilton, James Wilson, and James Madison—each a participant in the Constitutional Convention—show that they regarded impeachment as an appropriate device to deal with offenses against constitutional government by those who hold civil office, and not a device limited to criminal offenses.<sup>11</sup> Hamilton, in discussing the advantages of a single rather than a plural executive, explained that a single executive gave the people “the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office, or to their actual punishment in cases which admit of it.”<sup>12</sup> Hamilton further wrote: “Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment.”<sup>13</sup>

The American experience with impeachment, which is summarized above, reflects the principle that impeachable conduct need not be

<sup>5</sup> See part II.A. *supra*, pp. 5–7.

<sup>6</sup> See part II.B.2. *supra*, pp. 12–13.

<sup>7</sup> See *Id.*, p. 11.

<sup>8</sup> See part II.B.3. *supra*, pp. 13–15.

<sup>9</sup> 4 Elliot 114.

<sup>10</sup> 3 Elliot 240.

<sup>11</sup> See part II.B.1. *supra* p. 9; part II.B.3. *supra*, pp. 13–15, 16.

<sup>12</sup> *Federalist* No. 70, at 461.

<sup>13</sup> *Id.* at 459.



criminal. Of the thirteen impeachments voted by the House since 1789, at least ten involved one or more allegations that did not charge a violation of criminal law.<sup>14</sup>

Impeachment and the criminal law serve fundamentally different purposes. Impeachment is the first step in a remedial process—removal from office and possible disqualification from holding future office. The purpose of impeachment is not personal punishment;<sup>15</sup> its function is primarily to maintain constitutional government. Furthermore, the Constitution itself provides that impeachment is no substitute for the ordinary process of criminal law since it specifies that impeachment does not immunize the officer from criminal liability for his wrongdoing.<sup>16</sup>

The general applicability of the criminal law also makes it inappropriate as the standard for a process applicable to a highly specific situation such as removal of a President. The criminal law sets a general standard of conduct that all must follow. It does not address itself to the abuses of presidential power. In an impeachment proceeding a President is called to account for abusing powers that only a President possesses.

Other characteristics of the criminal law make criminality inappropriate as an essential element of impeachable conduct. While the failure to act may be a crime, the traditional focus of criminal law is prohibitory. Impeachable conduct, on the other hand, may include the serious failure to discharge the affirmative duties imposed on the President by the Constitution. Unlike a criminal case, the cause for the removal of a President may be based on his entire course of conduct in office. In particular situations, it may be a course of conduct more than individual acts that has a tendency to subvert constitutional government.

To confine impeachable conduct to indictable offenses may well be to set a standard so restrictive as not to reach conduct that might adversely affect the system of government. Some of the most grievous offenses against our constitutional form of government may not entail violations of the criminal law.

<sup>14</sup> See Part ILC. *supra*, pp. 13–17.

<sup>15</sup> It has been argued that "[i]mpeachment is a special form of punishment for crime," but that gross and willful neglect of duty would be a violation of the oath of office and "[s]uch violation, by criminal acts of commission or omission, is the only nonindictable offense for which the President, Vice President, judges or other civil officers can be impeached." I. Brant, *Impeachment, Trials and Errors* 13, 20, 23 (1972). While this approach might in particular instances lead to the same results as the approach to impeachment as a constitutional remedy for action incompatible with constitutional government and the duties of constitutional office, it is, for the reasons stated in this memorandum, the latter approach that best reflects the intent of the framers and the constitutional function of impeachment. At the time the Constitution was adopted, "crime" and "punishment for crime" were terms used far more broadly than today. The seventh edition of Samuel Johnson's dictionary, published in 1785, defines "crime" as "an act contrary to right, an offense; a great fault; an act of wickedness." To the extent that the debates on the Constitution and its ratification refer to impeachment as a form of "punishment" it is punishment in the sense that today would be thought a non-criminal sanction, such as removal of a corporate officer for misconduct breaching his duties to the corporation.

<sup>16</sup> It is sometimes suggested that various provisions in the Constitution exempting cases of impeachment from certain provisions relating to the trial and punishment of crimes indicate an intention to require an indictable offense as an essential element of impeachable conduct. In addition to the provision referred to in the text (Article I, Section 3), cases of impeachment are exempted from the power of pardon and the right to trial by jury in Article II, Section 2 and Article III, Section 2 respectively. These provisions were placed in the Constitution in recognition that impeachable conduct *may* entail criminal conduct and to make it clear that even when criminal conduct is involved, the trial of an impeachment was not intended to be a criminal proceeding. The sources quoted at notes 8–13, *supra*, show the understanding that impeachable conduct may, but need not, involve criminal conduct.

If criminality is to be the basic element of impeachable conduct, what is the standard of criminal conduct to be? Is it to be criminality as known to the common law, or as divined from the Federal Criminal Code, or from an amalgam of State criminal statutes? If one is to turn to State statutes, then which of those of the States is to obtain? If the present Federal Criminal Code is to be the standard, then which of its provisions are to apply? If there is to be new Federal legislation to define the criminal standard, then presumably both the Senate and the President will take part in fixing that standard. How is this to be accomplished without encroachment upon the constitutional provision that "the sole power" of impeachment is vested in the House of Representatives?

A requirement of criminality would be incompatible with the intent of the framers to provide a mechanism broad enough to maintain the integrity of constitutional government. Impeachment is a constitutional safety valve; to fulfill this function, it must be flexible enough to cope with exigencies not now foreseeable. Congress has never undertaken to define impeachable offenses in the criminal code. Even respecting bribery, which is specifically identified in the Constitution as grounds for impeachment, the federal statute establishing the criminal offense for civil officers generally was enacted over seventy-five years after the Constitutional Convention.<sup>17</sup>

In sum, to limit impeachable conduct to criminal offenses would be incompatible with the evidence concerning the constitutional meaning of the phrase "high Crimes and Misdemeanors" and would frustrate the purpose that the framers intended for impeachment. State and federal criminal laws are not written in order to preserve the nation against serious abuse of the presidential office. But this is the purpose of the constitutional provision for the impeachment of a President and that purpose gives meaning to "high Crimes and Misdemeanors."

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<sup>17</sup> It appears from the annotations to the Revised Statutes of 1873 that bribery was not made a federal crime until 1790 for judges, 1853 for Members of Congress, and 1863 for other civil officers. *U.S. Rev. Stat.*, Title LXX, Ch. 6, §§ 5499-502. This consideration strongly suggests that conduct not amounting to statutory bribery may nonetheless constitute the constitutional "high Crime and Misdemeanor" of bribery.

## IV. Conclusion

Impeachment is a constitutional remedy addressed to serious offenses against the system of government. The purpose of impeachment under the Constitution is indicated by the limited scope of the remedy (removal from office and possible disqualification from future office) and by the stated grounds for impeachment (treason, bribery and other high crimes and misdemeanors). It is not controlling whether treason and bribery are criminal. More important, they are constitutional wrongs that subvert the structure of government, or undermine the integrity of office and even the Constitution itself, and thus are "high" offenses in the sense that word was used in English impeachments.

The framers of our Constitution consciously adopted a particular phrase from the English practice to help define the constitutional grounds for removal. The content of the phrase "high Crimes and Misdemeanors" for the framers is to be related to what the framers knew, on the whole, about the English practice—the broad sweep of English constitutional history and the vital role impeachment had played in the limitation of royal prerogative and the control of abuses of ministerial and judicial power.

Impeachment was not a remote subject for the framers. Even as they labored in Philadelphia, the impeachment trial of Warren Hastings, Governor-General of India, was pending in London, a fact to which George Mason made explicit reference in the Convention. Whatever may be said on the merits of Hastings' conduct, the charges against him exemplified the central aspect of impeachment—the parliamentary effort to reach grave abuses of governmental power.

The framers understood quite clearly that the constitutional system they were creating must include some ultimate check on the conduct of the executive, particularly as they came to reject the suggested plural executive. While insistent that balance between the executive and legislative branches be maintained so that the executive would not become the creature of the legislature, dismissible at its will, the framers also recognized that some means would be needed to deal with excesses by the executive. Impeachment was familiar to them. They understood its essential constitutional functions and perceived its adaptability to the American contest.

While it may be argued that some articles of impeachment have charged conduct that constituted crime and thus that criminality is an essential ingredient, or that some have charged conduct that was not criminal and thus that criminality is not essential, the fact remains that in the English practice and in several of the American impeachments the criminality issue was not raised at all. The emphasis has been on the significant effects of the conduct—undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the governmental process, adverse impact on the system of government. Clearly, these effects can be brought about in



ways not anticipated by the criminal law. Criminal standards and criminal courts were established to control individual conduct. Impeachment was evolved by Parliament to cope with both the inadequacy of criminal standards and the impotence of courts to deal with the conduct of great public figures. It would be anomalous if the framers, having barred criminal sanctions from the impeachment remedy and limited it to removal and possible disqualification from office, intended to restrict the grounds for impeachment to conduct that was criminal.

The longing for precise criteria is understandable: advance, precise definition of objective limits would seemingly serve both to direct future conduct and to inhibit arbitrary reaction to past conduct. In private affairs the objective is the control of personal behavior, in part through the punishment of misbehavior. In general, advance definition of standards respecting private conduct works reasonably well. However, where the issue is presidential compliance with the constitutional requirements and limitations on the presidency, the crucial factor is not the intrinsic quality of behavior but the significance of its effect upon our constitutional system or the functioning of our government.

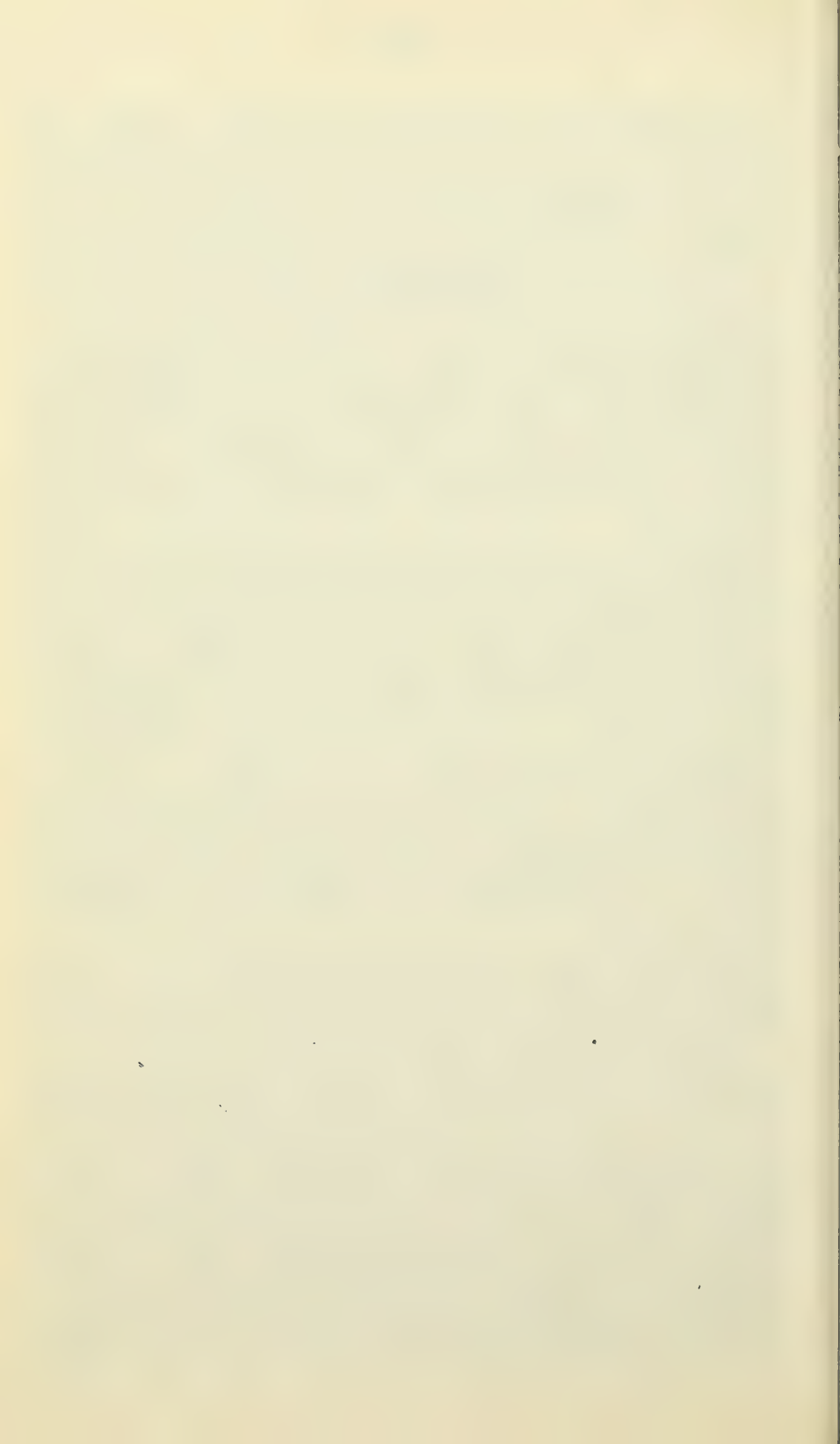
It is useful to note three major presidential duties of broad scope that are explicitly recited in the Constitution: "to take Care that the Laws be faithfully executed," to "faithfully execute the Office of President of the United States" and to "preserve, protect, and defend the Constitution of the United States" to the best of his ability. The first is directly imposed by the Constitution; the second and third are included in the constitutionally prescribed oath that the President is required to take before he enters upon the execution of his office and are, therefore, also expressly imposed by the Constitution.

The duty to take care is affirmative. So is the duty faithfully to execute the office. A President must carry out the obligations of his office diligently and in good faith. The elective character and political role of a President make it difficult to define faithful exercise of his powers in the abstract. A President must make policy and exercise discretion. This discretion necessarily is broad, especially in emergency situations, but the constitutional duties of a President impose limitations on its exercise.

The "take care" duty emphasizes the responsibility of a President for the overall conduct of the executive branch, which the Constitution vests in him alone. He must take care that the executive is so organized and operated that this duty is performed.

The duty of a President to "preserve, protect, and defend the Constitution" to the best of his ability includes the duty not to abuse his powers or transgress their limits—not to violate the rights of citizens, such as those guaranteed by the Bill of Rights, and not to act in derogation of powers vested elsewhere by the Constitution.

Not all presidential misconduct is sufficient to constitute grounds for impeachment. There is a further requirement—substantiality. In deciding whether this further requirement has been met, the facts must be considered as a whole in the context of the office, not in terms of separate or isolated events. Because impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.



## Appendixes

### APPENDIX A

#### PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION, 1787

##### SELECTION, TERM AND IMPEACHMENT OF THE EXECUTIVE

The Convention first considered the question of removal of the executive on June 2, in Committee of the Whole in debate of the Virginia Plan for the Constitution, offered by Edmund Randolph of Virginia on May 29. Randolph's *seventh* resolution provided: "that a National Executive be instituted; to be chosen by the National Legislature for the term of [ ] years . . . and to be ineligible a second time; and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the Confederation."<sup>1</sup> Randolph's *ninth* resolution provided for a national judiciary, whose inferior tribunals in the first instance and the supreme tribunal in the last resort would hear and determine (among other things) "impeachments of any National officers." (I:22)

On June 1, the Committee of the Whole debated, but postponed the question whether the executive should be a single person. It then voted, five states to four, that the term of the executive should be seven years. (I:64) In the course of the debate on this question, Gunning Bedford of Delaware, who "was strongly opposed to so long a term as seven years" and favored a triennial election with ineligibility after nine years, commented that "an impeachment would reach misfeasance only, not incapacity," and therefore would be no cure if it were found that the first magistrate "did not possess the qualifications ascribed to him, or should lose them after his appointment." (I:69)

On June 2, the Committee of the Whole agreed, eight states to two, that the executive should be elected by the national legislature. (I:77) Thereafter, John Dickenson of Delaware moved that the executive be made removable by the national legislature on the request of a majority of the legislatures of the states. It was necessary, he argued, "to place the power of removing somewhere," but he did not like the plan of impeaching the great officers of the government and wished to preserve the role of the states. Roger Sherman of Connecticut suggested that the national legislature should be empowered to remove the executive at pleasure (I:85), to which George Mason of Virginia replied that "[s]ome mode of displacing an unfit magistrate" was indispensable both because of "the fallibility of those who choose" and "the corruptibility of the man chosen." But Mason strongly opposed making the executive "the mere creature of the Legislature" as violation of the fundamental principle of good government. James Madison of Virginia and James Wilson of Pennsylvania argued against Dickenson's motion because it would put small states on an

<sup>1</sup> *The Records of the Federal Convention* 21 (M. Farrand ed. 1911). All references hereafter in this appendix are given parenthetically in the text and refer to the volume and page of Farrand (e.g., I: 21).



equal basis with large ones and "enable a minority of the people to prevent ye removal of an officer who had rendered himself justly criminal in the eyes of a majority; open the door for intrigues against him in states where his administration, though just, was unpopular; and tempt him to pay court to particular states whose partisans he feared or wished to engage in his behalf. (I:86) Dickenson's motion was rejected, with only Delaware voting for it. (I:87).

The Committee of the Whole then voted, seven states to two, that the executive should be made ineligible after seven years (I:88).

On motion of Hugh Williamson of North Carolina, the Committee agreed, apparently without debate, to add the clause "and to be removable on impeachment & conviction of mal-practice or neglect of duty." (I:88)

#### SINGLE EXECUTIVE

The Committee then returned to the question whether there should be a single executive. Edmund Randolph argued for a plural executive, primarily because "the permanent temper of the people was adverse to the very semblance of Monarchy." (I:88) (He had said on June 1, when the question was first discussed, that he regarded a unity in the executive as "the foetus of monarchy." (I:66)). On June 4, the Committee resumed debate of the issue, with James Wilson making the major argument in favor of a single executive. The motion for a single executive was agreed to, seven states to three. (I:97).

George Mason of Virginia was absent when the vote was taken; he returned during debate on giving the executive veto power over legislative acts. In arguing against the executive's appointment and veto power, he commented that the Convention was constituting "a more dangerous monarchy" than the British government, "an elective one." (I:101). He never could agree, he said "to give up all the rights of the people to a single Magistrate. If more than one had been fixed on, greater powers might have been entrusted to the Executive"; and he hoped that the attempt to give such powers would have weight later as an argument for a plural executive. (I:102).

On June 13, the Committee of the Whole reported its actions on Randolph's propositions to the Convention. (I:228-32) On June 15, William Patterson of New Jersey proposed his plan as an alternative. Patterson's resolution called for a federal executive elected by Congress, consisting of an unstated number of persons, to serve for an undesignated term and to be ineligible for a second term, removable by Congress on application by a majority of the executives of the states. The major purpose of the Patterson plan was to preserve the equality of state representation provided in the Articles of Confederation, and it was on this issue that it was rejected. (II:242-45) The Randolph resolutions called for representation on the basis of population in both houses of the legislature. (I:229-30) The Patterson resolution was debated in the Committee of the Whole on June 16, 18, and 19. The Committee agreed seven states to three, to re-report Randolph's resolutions as amended, thereby adhering to them in preference to Patterson's. (I:322)

## SELECTION OF THE EXECUTIVE

On July 17, the Convention began debate on Randolph's ninth resolution as amended and reported by the Committee of the Whole. The consideration by the Convention of the resolution began with unanimous agreement that the executive should consist of a single person. (II: 29) The Convention then turned to the mode of election. It voted against election by the people instead of the legislature, proposed by Gouverneur Morris of Pennsylvania, one state to nine. (II: 32) Gouverneur Morris had argued that if the executive were appointed and impeachable by the legislature, he "will be the mere creature" of the legislature (II: 29), a view which James Wilson reiterated, adding that "it was notorious" that the power of appointment to great offices "was most corruptly managed of any that had been committed to legislative bodies." (II: 32)

Luther Martin of Maryland then proposed that the executive be chosen by electors appointed by state legislators, which was rejected eight states to two, and election by the legislature was passed unanimously. (II: 32)

## TERM OF THE EXECUTIVE

The Convention voted six states to four to strike the clause making the President ineligible for reelection. In support of reeligibility, Gouverneur Morris argued that ineligibility "tended to destroy the great motive to good behaviour, the hope of being rewarded by a re-appointment. It was saying to him, make hay while the sun shines." (II: 33)

The question of the President's term was then considered. A motion to strike the seven year term and insert "during good behavior" failed by a vote of four states to six. (II: 36) In his Journal of the Proceedings, James Madison suggests that the "probable object of this motion was merely to enforce the argument against re-eligibility of the Executive Magistrate, by holding out a tenure during good behavior as the alternative for keeping him independent of the Legislature." (II: 33) After this vote, and a vote not to strike seven years, it was unanimously agreed to reconsider the question of the executive's re-eligibility. (II: 36)

## JURISDICTION OF JUDICIARY TO TRY IMPEACHMENTS

On July 18, the Convention considered the resolution dealing with the Judiciary. The mode of appointing judges was debated, George Mason suggesting that this question "may depend in some degree on the mode of trying impeachments, of the Executive." If the judges were to try the executive, Mason contended, they surely ought not be appointed by him. Mason opposed executive appointment; Gouverneur Morris, who favored it, agreed that it would be improper for the judges to try an impeachment of the executive, but suggested that this was not an argument against their appointment by the executive. (II: 41-42) Ultimately, after the Convention divided evenly on a

proposal for appointment by the Executive with advice and consent of the second branch of the legislature, the question was postponed. (II: 44) The Convention did, however, unanimously agree to strike the language giving the judiciary jurisdiction of "impeachments of national officers." (II: 46)

#### REELECTION OF THE EXECUTIVE

On July 19, the Convention again considered the eligibility of the executive for reelection. (II: 51) The debate on this issue reintroduced the question of the mode of election of the executive, and it was unanimously agreed to reconsider generally the constitution of the executive. The debate suggests the extent of the delegates' concern about the independence of the executive from the legislature. Gouverneur Morris, who favored reeligibility, said:

One great object of the Executive is to controul the Legislature. The Legislature will continually seek to aggrandize & perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose. It is necessary then that the Executive Magistrate should be the guardian of the people, even of the lower classes, agst. Legislative tyranny.... (II: 52)

The ineligibility of the executive for reelection, he argued, "will destroy the great incitement to merit public esteem by taking away the hope of being rewarded with a reappointment. . . . It will tempt him to make the most of the Short space of time allotted him, to accumulate wealth and provide for his friends. . . . It will produce violations of the very Constitution it is meant to secure," as in moments of pressing danger an executive will be kept on despite the forms of the Constitution. And Morris described the impeachability of the executive as "a dangerous part of the plan. It will hold him in such dependence that he will be no check on the Legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the Legislature." (II: 53)

Morris proposed a popularly elected executive, serving for a two year term, eligible for reelection, and not subject to impeachment. He did "not regard . . . as formidable" the danger of his unimpeachability:

There must be certain great officers of State: a minister of finance, of war, of foreign affairs &c. These he presumes will exercise their functions in subordination to the Executive, and will be amenable by impeachment to the public Justice. Without these ministers the Executive can do nothing of consequence. (II: 53-54)

The remarks of other delegates also focused on the relationship between appointment by the legislature and reeligibility, and James Wilson remarked that "the unanimous sense" seemed to be that the executive should not be appointed by the legislature unless he was ineligible for a second time. As Elbridge Gerry of Massachusetts remarked, "[Making the executive eligible for reappointment] would make him absolutely dependent." (II: 57) Wilson argued for popular election, and Gerry for appointment by electors chosen by the state executives.



## SELECTION, REELECTION AND TERM OF THE EXECUTIVE

Upon reconsidering the mode of appointment, the Convention voted six States to three for appointment by electors and eight States to two that the electors should be chosen by State legislatures. (The ratio of electors among the States was postponed.) It then voted eight States to two against the executive's ineligibility for a second term. (II:58) A seven-year term was rejected, three States to five; and a six-year term adopted, nine States to one (II:58-59).

## IMPEACHMENT OF THE EXECUTIVE

On July 20, the Convention voted on the number of electors for the first election and on the apportionment of electors thereafter. (II:63) It then turned to the provision for removal of the executive on impeachment and conviction for "mal-practice or neglect of duty." After debate, it was agreed to retain the impeachment provision, eight states to two. (II:69) This was the only time during the Convention that the purpose of impeachment was specifically addressed.

Charles Pinckney of South Carolina and Gouverneur Morris moved to strike the impeachment clause, Pinckney observing that the executive "[ought not to] be impeachable whilst in office." (A number of State constitutions then provided for impeachment of the executive only after he had left office.) James Wilson and William Davie of North Carolina argued that the executive should be impeachable while in office, Davie commenting:

If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected.

Davie called his impeachability while in office "an essential security for the good behaviour of the Executive." (II:64)

Gouverneur Morris, reiterating his previous argument, contended that the executive "can do no criminal act without Coadjutors who may be punished. In case he should be re-elected, that will be sufficient proof of his innocence." He also questioned whether impeachment would result in suspension of the executive. If it did not, "the mischief will go on"; if it did, "the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach." (II:64-65)

As the debate proceeded, however, Gouverneur Morris changed his mind. During the debate, he admitted "corruption & some few other offenses to be such as ought to be impeachable," but he thought they should be enumerated and defined. (II:65) By the end of the discussion, he was, he said, "now sensible of the necessity of impeachments, if the Executive was to continue for any time in office." He cited the possibility that the executive might "be bribed by a greater interest to betray his trust." (II:68) While one would think the King of England well secured against bribery, since "[h]e has as it were a fee simple in the whole Kingdom," yet, said Morris, "Charles II was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery." (II:68-69) Other causes of impeachment were "[c]orrupting his electors" and "incapacity," for which "he should be punished not as a man, but as an officer, and punished only by degradation from his office." Morris concluded: "This Magistrate is not the King

but the prime-Minister. The people are the King." He added that care should be taken to provide a mode for making him amenable to justice that would not make him dependent on the legislature. (II:69)

George Mason of Virginia was a strong advocate of the impeachability of the executive; no point, he said, "is of more importance than that the right of impeachment should be continued":

Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors.

(This comment was in direct response to Gouverneur Morris's original contention that the executive could "do no criminal act without Coadjutors who may be punished.") Mason went on to say that he favored election of the executive by the legislature, and that one objection to electors was the danger of their being corrupted by the candidates. This, he said, "furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?" (II:65)

Benjamin Franklin supported impeachment as "favorable to the Executive." At a time when first magistrates could not formally be brought to justice, "where the chief Magistrate rendered himself obnoxious. . . . recourse was had to assassination in wch. he was not only deprived of his life but of the opportunity of vindicating his character." It was best to provide in the Constitution "for the regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused." (II: 65)

James Madison argued that it was "indispensable that some provision should be made for defending the Community agst the incapacity, negligence or perfidy of the chief Magistrate." A limited term "was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers." (II: 65-66) It could not be presumed that all or a majority of a legislative body would lose their capacity to discharge their trust or be bribed to betray it, and the difficulty of acting in concert for purposes of corruption provided a security in their case. But in the case of the Executive to be administered by one man, "loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic." (II: 66)

Charles Pinckney reasserted that he did not see the necessity of impeachments and that he was sure "they ought not to issue from the Legislature who would . . . hold them as a rod over the Executive and by that means effectually destroy his independence," rendering his legislative revisionary power in particular altogether insignificant. (II: 66)

Elbridge Gerry argued for impeachment as a deterrent: "A good magistrate will not fear them. A bad one ought to be kept in fear of them." He hoped that the maxim that the chief magistrate could do no wrong "would never be adopted here." (II: 66)

Rufus King argued against impeachment from the principle of the separation of powers. The judiciary, it was said, would be impeach-

able, but that was because they held their place during good behavior and "[i]t is necessary therefore that a forum should be established for trying misbehaviour." (II:66) The executive, like the legislature and the Senate in particular, would hold office for a limited term of six years; "he would periodically be tried for his behaviour by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it." Like legislators, therefore, "he ought to be subject to no intermediate trial, by impeachment." (II:67) Impeachment is proper to secure good behavior of those holding their office for life: it is unnecessary for any officer who is elected for a limited term, "the periodical responsibility to the electors being an equivalent security." (II:68)

King also suggested that it would be "most agreeable to him" if the executive's tenure in office were good behaviour; and impeachment would be appropriate in this case, "provided an independent and effectual forum could be advised." He should not be impeachable by the legislature, for this "would be destructive of his independence and of the principles of the Constitution." (II:67)

Edmund Randolph agreed that it was necessary to proceed "with a cautious hand" and to exclude "as much as possible the influence of the Legislature from the business." He favored impeachment, however:

The propriety of impeachments was a favorite principle with him; Guilt wherever found ought to be punished. The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections. (II:67)

Charles Pinckney rejoined that the powers of the Executive "would be so circumscribed as to render impeachment unnecessary," (II:68)

#### SELECTION OF THE EXECUTIVE

On July 24, the decision to have electors choose the executive was reconsidered, and the national legislature was again substituted, seven states to four. (II:101) It was then moved to reinstate the one-term limitation, which led to discussion and motions with respect to the length of his term—eleven years, fifteen years, twenty years ("the medium life of princes"—a suggestion possibly meant, according to Madison's journal, "as a caricature of the previous motions"), and eight years were offered. (II:102) James Wilson proposed election for a term of six years by a small number of members of the legislature selected by lot. (II:103) The election of the executive was unanimously postponed. (II:106) On July 25, the Convention rejected, four states to seven, a proposal for appointment by the legislature unless the incumbent were reeligible in which case the choice would be made by electors appointed by the state legislatures. (II:111) It then rejected, five states to six, Pinckney's proposal for election by the legislature, with no person eligible for more than six years in any twelve. (II:115)

The debate continued on the 26th, and George Mason suggested re-instituting the original mode of election and term reported by the Committee of the Whole (appointment by the legislature, a seven-year term, with no reeligibility for a second term). (II:118-19) This was



agreed to, seven states to three. (II:120) The entire resolution on the executive was then adopted (six states to three) and referred to a five member Committee on Detail to prepare a draft Constitution. (II:121)

#### PROVISIONS IN THE DRAFT OF AUGUST 6

The Committee on Detail reported a draft on August 6. It included the following provisions with respect to impeachment:

The House of Representatives shall have the sole power of impeachment. (Art. IV, sec. 6)

[The President] shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. . . . He [The President] shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. (Art. X, sec. 2)

The Jurisdiction of the Supreme Court shall extend . . . to the trial of impeachments of Officers of the United States. . . . In cases of impeachment . . . this jurisdiction shall be original. . . . The Legislature may assign any part of the jurisdiction above mentioned (except the trial of the President of the United States) . . . to . . . Inferior Courts. . . . (Art. XI, sec. 3)

The trial of all criminal offences (except in cases of impeachments) shall be in the State where they shall be committed; and shall be by Jury. (Art. XI, sec. 4)

Judgment, in cases of Impeachment, shall not extend further than to removal from Office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States. But the party convicted shall, nevertheless be liable and subject to indictment, trial, judgment and punishment according to law. (Art. XI, sec. 5) (II: 178-79, 185-87)

The draft provided, with respect to the executive:

The Executive Power of the United States shall be vested in a single person. His stile shall be "The President of the United States of America:" and his title shall be, "His Excellency". He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time. (Art. X, sec. 1) (II: 185)

Article IV, section 6 was unanimously agreed to by the Convention on August 9. (II: 231) On August 22, a prohibition of bills of attainder and ex post facto laws was voted, the first unanimously and the second seven states to three. (II: 376) On August 24, the Convention considered Article X, dealing with the Executive. It unanimously approved vesting the power in a single person. (II: 401) It rejected, nine states to two, a motion for election "by the people" rather than by the Legislature. (II:402) It then amended the provision to provide for "joint ballot" (seven states to four), rejected each state having one vote (five states to six), and added language requiring a majority of the votes of the members present for election (ten states to one). (II:403) Gouverneur Morris proposed election by "Electors to be chosen by the people of the several States," which failed five states

to six; then a vote on the "abstract question" of selection by electors failed, the States being evenly divided (four states for, four opposed, two divided, and Massachusetts absent). (II: 404)

On August 25, the clause giving the President pardon power was unanimously amended so that cases of impeachment were excepted, rather than a pardon not being pleadable in bar of impeachment. (II: 419-20)

On August 27, the impeachment provision of Article X was unanimously postponed at the instance of Gouverneur Morris, who thought the Supreme Court an improper tribunal. (II: 427) A proposal to make judges removable by the Executive on the application of the Senate and House was rejected, one state to seven. (II: 429)

#### EXTRADITION: "HIGH MISDEMEANOR"

On August 28, the Convention unanimously amended the extradition clause, which referred to any person "charged with treason, felony or high misdemeanor in any State, who shall flee from justice" to strike "high misdemeanor" and insert "other crime." The change was made "in order to comprehend all proper cases: it being doubtful whether 'high misdemeanor' had not a technical meaning too limited." (II: 443)

#### FORUM FOR TRIAL OF IMPEACHMENTS

On August 31, those parts of the Constitution that had been postponed were referred to a committee with one member from each state—the Committee of Eleven. (II: 473) On September 4, the Committee reported to the Convention. It proposed that the Senate have power to try all impeachments, with concurrence of two-thirds of the members present required for a person to be convicted. The provisions concerning election of the President and his term in office were essentially what was finally adopted in the Constitution, except that the Senate was given the power to choose among the five receiving the most electoral votes if none had a majority. (II: 496-99) The office of Vice President was created, and it was provided that he should be ex officio President of the Senate "except when they sit to try the impeachment of the President, in which case the Chief Justice shall preside." (II: 498) The provision for impeachment of the President was amended to delete "corruption" as a ground for removal, reading:

He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for treason, or bribery.... (II: 499)

The Convention postponed the Committee's provision making the Senate the tribunal for impeachments "in order to decide previously on the mode of electing the President." (II: 499)

#### SELECTION OF THE PRESIDENT

Gouverneur Morris explained "the reasons of the Committee and his own" for the mode of election of the President:

The 1st was the danger of intrigue & faction if the appointment should be made by the Legislature. 2 the inconveniency of an ineligibility required by that mode in order to lessen its evils.

3 The difficulty of establishing a Court of Impeachments, other than the Senate which would not be so proper for the trial nor the other branch for the impeachment of the President, if appointed by the Legislature, 4 No body had appeared to be satisfied with an appointment by the Legislature. 5. Many were anxious even for an immediate choice by the people—6—the indispensable necessity of making the Executive independent of the Legislature. (II:500)

The "great evil of cabal was avoided" because the electors would vote at the same time throughout the country at a great distance from each other: "[i]t would be impossible also to corrupt them." A conclusive reason, said Gouverneur Morris, for having the Senate the judge of impeachments rather than the Supreme Court was that the Court "was to try the President after the trial of the impeachment." (II:500) Objections were made that the Senate would almost always choose the President. Charles Pinckney asserted, "It makes the same body of men which will in fact elect the President his Judges in case of an impeachment." (II:501) James Wilson and Edmund Randolph suggested that the eventual selection should be referred to the whole legislature, not just the Senate; Gouverneur Morris responded that the Senate was preferred "because fewer could then, say to the President, you owe your appointment to us. He thought the President would not depend so much on the Senate for his re-appointment as on his general good conduct." (II:502) Further consideration on the report was postponed until the following day.

On September 5 and 6, a substantial number of amendments were proposed. The most important, adopted by a vote of ten states to one, provided that the House, rather than the Senate, should choose in the event no person received a majority of the electoral votes, with the representation from each state having one vote, and a quorum of two-thirds of the states being required. (II: 527–28) This amendment was supported as "lessening the aristocratic influence of the Senate," in the words of George Mason. Earlier, James Wilson had criticized the report of the Committee of Eleven as "having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate," who would have, in fact, the appointment of the President, and through his dependence on them the virtual appointment to other offices (including the judiciary), would make treaties, and would try all impeachments. "[T]he Legislative, Executive & Judiciary powers are all blended in one branch of the Government. . . . [T]he President will not be the man of the people as he ought to be, but the Minion of the Senate." (II: 522–23)

#### ADOPTION OF "HIGH CRIMES AND MISDEMEANORS"

On September 8, the Convention considered the clause referring to impeachment and removal of the President for treason and bribery. George Mason asked, "Why is the provision restrained to Treason & bribery only?" Treason as defined by the Constitution, he said, "will not reach many great and dangerous offenses. . . . Attempts to subvert the Constitution may not be Treason . . ." Not only was treason limited, but it was "the more necessary to extend: the power of impeachments" because bills of attainder were forbidden. Mason moved to add "maladministration" after "bribery". (II:550)



James Madison commented, "So vague a term will be equivalent to a tenure during pleasure of the Senate," and Mason withdrew "mal-administration" and substituted "high crimes & misdemeanors . . . agst. the State." This term was adopted, eight states to three. (II: 550)

#### TRIAL OF IMPEACHMENTS BY THE SENATE

Madison then objected to trial of the President by the Senate and after discussion moved to strike the provision, stating a preference for a tribunal of which the Supreme Court formed a part. He objected to trial by the Senate, "especially as [the President] was to be impeached by the other branch of the Legislature, and for any act which might be called a misdemeanor. The President under these circumstances was made improperly dependent." (II: 551)

Gouverneur Morris (who had said of "maladministration" that it would "not be put in force and can do no harm"; an election every four years would "prevent maladministration" II: 550) argued that no tribunal other than the Senate could be trusted. The Supreme Court, he said, "were too few in number and might be warped or corrupted." He was against a dependence of the executive on the legislature, and considered legislative tyranny the great danger. But, he argued, "there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes or facts, especially as in four years he can be turned out." (II: 551)

Charles Pinckney opposed the Senate as the court of impeachments because it would make the President too dependent on the legislature. "If he opposes a favorite law, the two Houses will combine against him, and under the influence of heat and faction throws him out of office." Hugh Williamson of North Carolina replied that there was "more danger of too much lenity than of too much rigour towards the President," considering the number of respects in which the Senate was associated with the President. (II: 51)

After Madison's motion to strike out the provision for trial by the Senate failed, it was unanimously agreed to strike "State" and insert "United States" after "misdemeanors against," "in order to remove ambiguity." (II: 551) It was then agreed to add: "The vice-President and other Civil officers of the U.S. shall be removed from office on impeachment and conviction as aforesaid."

Gouverneur Morris moved to add a requirement that members of the Senate would be on oath in an impeachment trial, which was agreed to, and the Convention then voted, nine states to two, to agree to the clause for trial by the Senate. (II: 552-53)

#### COMMITTEE ON STYLE AND ARRANGEMENT

A five member Committee on Style and Arrangement was appointed by ballot to arrange and revise the language of the articles agreed to by the Convention. (II: 553) The Committee reported a draft on September 12. The Committee, which made numerous changes to shorten and tighten the language of the Constitution, had dropped the expression "against the United States" from the description of grounds for impeachment, so the clause read, "The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high Crimes and Misdemeanors." (II: 600)

## SUSPENSION UPON IMPEACHMENT

On September 14, John Rutledge and Gouverneur Morris moved "that persons impeached be suspended from their office until they be tried and acquitted. (II: 612) Madison objected that the President was already made too dependent on the legislature by the power of one branch to try him in consequence of an impeachment by the other. Suspension he argued, "will put him in the power of one branch only," which can at any moment vote a temporary removal of the President in order "to make way for the functions of another who will be more favorable to their views." The motion was defeated, three states to eight. (II: 613).

No further changes were made with respect to the impeachment provision or the election of the President. On September 15, the Constitution was agreed to, and on September 17 it was signed and the Convention adjourned. (II: 650)

## APPENDIX B

## AMERICAN IMPEACHMENT CASES

## 1. SENATOR WILLIAM BLOUNT (1797-1799)

*a. Proceedings in the House*

The House adopted a resolution in 1797 authorizing a select committee to examine a presidential message and accompanying papers regarding the conduct of Senator Blount.<sup>1</sup> The committee reported a resolution that Blount "be impeached for high crimes and misdemeanors," which was adopted without debate or division.<sup>2</sup>

*b. Articles of Impeachment*

Five articles of impeachment were agreed to by the House without amendment (except a "mere verbal one").<sup>3</sup>

*Article I* charged that Blount, knowing that the United States was at peace with Spain and that Spain and Great Britain were at war with each other, "but disregarding the duties and obligations of his high station, and designing and intending to disturb the peace and tranquillity of the United States, and to violate and infringe the neutrality thereof," conspired and contrived to promote a hostile military expedition against the Spanish possessions of Louisiana and Florida for the purpose of wresting them from Spain and conquering them for Great Britain. This was alleged to be "contrary to the duty of his trust and station as a Senator of the United States, in violation of the obligations of neutrality, and against the laws of the United States, and the peace and interests thereof."

*Article II* charged that Blount knowing of a treaty between the United States and Spain and "disregarding his high station, and the stipulations of the . . . treaty, and the obligations of neutrality," conspired to engage the Creek and Cherokee nations in the expedition against Louisiana and Florida. This was alleged to be contrary to Blount's duty of trust and station as a Senator, in violation of the treaty and of the obligations of neutrality, and against the laws, peace, and interest of the United States.

*Article III* alleged that Blount, knowing that the President was empowered by act of Congress to appoint temporary agents to reside among the Indians in order to secure the continuance of their friendship and that the President had appointed a principal temporary agent, "in the prosecution of his criminal designs and of his conspiracies" conspired and contrived to alienate the tribes from the President's agent and to diminish and impair his influence with the tribes, "contrary to the duty of his trust and station as a Senator and the peace and interests of the United States."

<sup>1</sup> 5 ANNALS OF CONG. 440-41 (1797).

<sup>2</sup> *Id.* 459.

<sup>3</sup> *Id.* 951.



*Article IV* charged that Blount, knowing that the Congress had made it lawful for the President to establish trading posts with the Indians and that the President had appointed an interpreter to serve as assistant post trader, conspired and contrived to seduce the interpreter from his duty and trust and to engage him in the promotion and execution of Blount's criminal intentions and conspiracies, contrary to the duty of his trust and station as a Senator and against the laws, treaties, peace and interest of the United States.

*Article V* charged that Blount, knowing of the boundary line between the United States and the Cherokee nation established by treaty, in further prosecution of his criminal designs and conspiracies and the more effectually to accomplish his intention of exciting the Cherokees to commence hostilities against Spain, conspired and contrived to diminish and impair the confidence of the Cherokee nation in the government of the United States and to create discontent and disaffection among the Cherokees in relation to the boundary line. This was alleged to be against Blount's duty and trust as a Senator and against impeachment was dismissed.

*c. Proceedings in the Senate*

Before Blount's impeachment, the Senate had expelled him for "having been guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator."<sup>4</sup> At the trial a plea was interposed on behalf of Blount to the effect that (1) a Senator was not a "civil officer," (2) having already been expelled, Blount was no longer impeachable, and (3) no crime or misdemeanor in the execution of the office had been alleged. The Senate voted 14 to 11 that the plea was sufficient in law that the Senate ought not to hold jurisdiction.<sup>5</sup> The impeachment was dismissed.

## 2. DISTRICT JUDGE JOHN PICKERING (1803-1804)

*a. Proceedings in the House*

A message received from the President of the United States, regarding complaints against Judge Pickering, was referred to a select committee for investigation in 1803.<sup>6</sup> A resolution that Pickering be impeached "of high crimes and misdemeanors" was reported to the full House the same year and adopted by a vote of 45 to 8.<sup>7</sup>

*b. Articles of Impeachment*

A select committee was appointed to draft articles of impeachment.<sup>8</sup> The House agreed unanimously and without amendment to the four articles subsequently reported.<sup>9</sup> Each article alleged high crimes and misdemeanors by Pickering in his conduct of an admiralty proceeding by the United States against a ship and merchandise that allegedly had been landed without the payment of duties.

*Article I* charged that Judge Pickering, "not regarding, but with intent to evade" an act of Congress, had ordered the ship and merchandise delivered to its owner without the production of any certifi-

<sup>4</sup> *Id.* 43-44.

<sup>5</sup> *Id.* 2319 (1799).

<sup>6</sup> 12 ANNALS OF CONG. 460 (1803).

<sup>7</sup> *Id.* 642.

<sup>8</sup> 13 ANNALS OF CONG. 380 (1803).

<sup>9</sup> *Id.* 794-95.

cate that the duty on the ship or the merchandise had been paid or secured, "contrary to [Pickering's] trust and duty as judge . . ., and to the manifest injury of [the] revenue."<sup>10</sup>

*Article II* charged that Pickering, "with intent to defeat the just claims of the United States," refused to hear the testimony of witnesses produced on behalf of the United States and, without hearing testimony, ordered the ship and merchandise restored to the claimant "contrary to his trust and duty, as judge of the said district court, in violation of the laws of the United States, and to the manifest injury of their revenue."<sup>11</sup>

*Article III* charged that Pickering, "disregarding the authority of the laws, and wickedly meaning and intending to injure the revenues of the United States, and thereby to impair the public credit, did absolutely and positively refuse to allow" the appeal of the United States on the admiralty proceedings, "contrary to his trust and duty as judge of the said district court, against the laws of the United States, to the great injury of the public revenue, and in violation of the solemn oath which he had taken to administer equal and impartial justice."<sup>12</sup>

*Article IV* charged :

That whereas for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering, being a man of loose morals and intemperate habits, . . . did appear upon the bench of the said court, for the purpose of administering justice [on the same dates as the conduct charged in articles I-III], in a state of total intoxication, . . . and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States, and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge, and degrading to the honor and dignity of the United States.<sup>13</sup>

#### *c. Proceedings in the Senate*

The Senate convicted Judge Pickering on each of the four articles by a vote of 19 to 7.<sup>14</sup>

#### *d. Miscellaneous*

The Senate heard evidence on the issue of Judge Pickering's sanity, but refused by a vote of 19 to 9 to postpone the trial.<sup>15</sup>

### 3. JUSTICE SAMUEL CHASE (1804-1805)

#### *a. Proceedings in the House*

In 1804 the House authorized a committee to inquire into the conduct of Supreme Court Justice Chase.<sup>16</sup> On the same day that Judge Pickering was convicted in the Senate, the House adopted by a vote of

<sup>10</sup> *Id.* 319.

<sup>11</sup> *Id.* 320-21.

<sup>12</sup> *Id.* 321-22.

<sup>13</sup> *Id.* 322.

<sup>14</sup> *Id.* 366-67.

<sup>15</sup> *Id.* 362-63.

<sup>16</sup> *Id.* 875.

73 to 32 a resolution reported by the committee that Chase be impeached of "high crimes and misdemeanors."<sup>17</sup>

*b. Articles of Impeachment*

After voting separately on each, the House adopted eight articles.<sup>18</sup>

*Article I* charged that, "unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them 'faithfully and impartially, and without respect to persons' [a quotation from the judicial oath prescribed by statute]," Chase, in presiding over a treason trial in 1800, "did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive and unjust" by:

(1) delivering a written opinion on the applicable legal definition of treason before the defendant's counsel had been heard;

(2) preventing counsel from citing certain English cases and U.S. statutes; and

(3) depriving the defendant of his constitutional privilege to argue the law to the jury and "endeavoring to wrest from the jury their indisputable right to hear argument and determine upon the question of law, as well as the question of fact" in reaching their verdict.

In consequence of this "irregular conduct" by Chase, the defendant was deprived of his Sixth Amendment rights and was condemned to death without having been represented by counsel "to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the rights of juries, on which ultimately, rest the liberty and safety of the people."<sup>19</sup>

*Article II* charged that, "prompted by a similar spirit of persecution and injustice," Chase had presided over a trial in 1800 involving a violation of the Sedition Act of 1798 (for defamation of the President, and, "with intent to oppress and procure the conviction" of the defendant, allowed an individual to serve on the jury who wished to be excused because he had made up his mind as to whether the publication involved was libelous."<sup>20</sup>

*Article III* charged that, "with intent to oppress and procure the conviction" of the defendant in the Sedition Act prosecution, Chase refused to permit a witness for the defendant to testify "on pretense that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact."<sup>21</sup>

*Article IV* charged that Chase's conduct throughout the trial was "marked by manifest injustice, partiality, and intemperance":

(1) in compelling defendant's counsel to reduce to writing for the court's inspection the questions they wished to ask the witness referred to in article III;

(2) in refusing to postpone the trial although an affidavit had been filed stating the absence of material witnesses on behalf of the defendant;

(3) in using "unusual, rude and contemptuous expressions" to defendant's counsel and in "falsely insinuating" that they wished

<sup>17</sup> *Id.* 1180.

<sup>18</sup> 14 ANNALS OF CONG. 747-62 (1804).

<sup>19</sup> *Id.* 728-29.

<sup>20</sup> *Id.* 729.

<sup>21</sup> *Id.*



to excite public fears and indignation and "to produce that insubordination to law to which the conduct of the judge did, at the same time, manifestly tend";

(4) in "repeated and vexatious interruptions of defendant's counsel, which induced them to withdraw from the case"; and

(5) in manifesting "an indecent solicitude" for the defendant's conviction, "unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice."<sup>22</sup>

*Article V* charged that Chase had issued a bench warrant rather than a summons in the libel case, contrary to law.<sup>23</sup>

*Article VI* charged that Chase refused a continuance of the libel trial to the next term of court, contrary to law and "with intent to oppress and procure the conviction" of the defendant.<sup>24</sup>

*Article VII* charged that Chase, "disregarding the duties of his office, did descend from the dignity of a judge and stoop to the level of an informer" by refusing to discharge a grand jury and by charging it to investigate a printer for sedition, with intention to procure the prosecution of the printer, "thereby degrading his high judicial functions and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare."<sup>25</sup>

*Article VIII* charged that Chase, "disregarding the duties and dignity of his judicial character," did "pervert his official right and duty to address" a grand jury by delivering "an intemperate and inflammatory political harangue with intent to excite the fears and resentment" of the grand jury and the people of Maryland against their state government and constitution, "a conduct highly censurable in any, but peculiarly indecent and unbecoming" in a Justice of the Supreme Court. This article also charged that Chase endeavored "to excite the odium" of the grand jury and the people of Maryland against the government of the United States "by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra-judicial, and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partisan."<sup>26</sup>

#### *c. Proceedings in the Senate*

Justice Chase was acquitted on each article by votes ranging from 0-34 not guilty on Article V to 19-15 guilty on Article VIII.<sup>27</sup>

### 4. DISTRICT JUDGE JAMES H. PECK (1830-1831)

#### *a. Proceedings in the House*

The House adopted a resolution in 1830 authorizing an inquiry respecting District Judge Peck.<sup>28</sup> The Judiciary Committee reported a resolution that Peck "be impeached of high misdemeanors in office" to the House, which adopted it by a vote of 123 to 49.<sup>29</sup>

<sup>22</sup> *Id.* 729-30.

<sup>23</sup> *Id.* 730.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* 730-31.

<sup>26</sup> *Id.* 731.

<sup>27</sup> *Id.* 665-69 (1805).

<sup>28</sup> H.R. JOUR., 21st Cong., 1st Sess. 138 (1830).

<sup>29</sup> 6 CONG. DEB. 819 (1830).

### *b. Article of Impeachment*

After the House voted in favor of impeachment, a committee was appointed to prepare articles. The single article proposed and finally adopted by the House charged that Peck, "unmindful of the solemn duties of his station," and "with interest in wrongfully and unjustly to oppress, imprison, and otherwise injure" an attorney who had published a newspaper article criticizing one of the judge's opinions, had brought the attorney before the court and, under "the color and pretences" of a contempt proceeding, had caused the attorney to be imprisoned briefly and suspended from practice for eighteen months. The House charged that Peck's conduct resulted in "the great disparagement of public justice, the abuse of judicial authority, and . . . the subversion of the liberties of the people of the United States."<sup>30</sup>

### *c. Proceedings in the Senate*

The trial in the Senate focused on two issues. One issue was whether Peck, by punishing the attorney for writing a newspaper article, had exceeded the limits of judicial contempt power under Section 17 of the Judiciary Act of 1789. The other contested issue was the requirement of proving wrongful intent.

Judge Peck was acquitted on the single article with twenty-one Senators voting in favor of conviction and twenty-two Senators against.<sup>31</sup>

## 5. DISTRICT JUDGE WEST H. HUMPHREYS (1862)

### *a. Proceedings in the House*

A resolution authorizing an inquiry by the Judiciary Committee respecting District Judge Humphreys was adopted in 1862.<sup>32</sup> Humphreys was subsequently impeached at the recommendation of the investigating committee.<sup>33</sup>

### *b. Articles of Impeachment*

Soon after the adoption of the impeachment resolution, seven articles of impeachment were agreed to by the House without debate.<sup>34</sup>

*Article I* charged that in disregard of his "duties as a citizen . . . and unmindful of the duties of his . . . office" as a judge, Humphreys "endeavor[ed] by public speech to incite revolt and rebellion" against the United States; and publicly declared that the people of Tennessee had the right to absolve themselves of allegiance to the United States.

*Article II* charged that, disregarding his duties as a citizen, his obligations as a judge, and the "good behavior" clause of the Constitution, Humphreys advocated and agreed to Tennessee's ordinance of secession.

*Article III* charged that Humphreys organized armed rebellion against the United States and waged war against them.

*Article IV* charged Humphreys with conspiracy to violate a civil war statute that made it a criminal offense "to oppose by force the authority of the Government of the United States."

<sup>30</sup> *Id.* 869. For text of article, see H.R. JOUR., 21st Cong., 1st Sess. 591-96 (1830).

<sup>31</sup> 7 CONG. DEB. 45 (1831).

<sup>32</sup> CONG. GLOBE, 37th Cong., 2d Sess. 229 (1862).

<sup>33</sup> *Id.* 1966-67.

<sup>34</sup> *Id.* 2205.

*Article V* charged that, with intent to prevent the administration of the laws of the United States and to overthrow the authority of the United States, Humphreys had failed to perform his federal judicial duties for nearly a year.

*Article VI* alleged that Judge Humphreys had continued to hold court in his state, calling it the district court of the Confederate States of America. *Article VI* was divided into three specifications, related to Humphreys' acts while sitting as a Confederate judge. The first specification charged that Humphreys endeavored to coerce a Union supporter to swear allegiance to the Confederacy. The second charged that he ordered the confiscation of private property on behalf of the Confederacy. The third charged that he jailed Union sympathizers who resisted the Confederacy.

*Article VII* charged that while sitting as a Confederate judge, Humphreys unlawfully arrested and imprisoned a Union supporter.

#### *c. Proceedings in the Senate*

Humphreys could not be personally served with the impeachment summons because he had fled Union territory.<sup>35</sup> He neither appeared at the trial nor contested the charges.

The Senate convicted Humphreys of all charges except the confiscation of property on behalf of the Confederacy, which several Senators stated had not been properly proved.<sup>36</sup> The vote ranged from 38-0 guilty on Articles I and IV to 11-24 not guilty on specification two of *Article VI*.

### 6. PRESIDENT ANDREW JOHNSON (1867-1868)

#### *a. Proceedings in the House*

The House adopted a resolution in 1867 authorizing the Judiciary Committee to inquire into the conduct of President Johnson.<sup>37</sup> A majority of the committee recommended impeachment,<sup>38</sup> but the House voted against the resolution, 108 to 57.<sup>39</sup> In 1868, however, the House authorized an inquiry by the Committee on Reconstruction, which reported an impeachment resolution after President Johnson had removed Secretary of War Stanton from office. The House voted to impeach, 128-47.<sup>40</sup>

#### *b. Articles of Impeachment*

Nine of the eleven articles drawn by a select committee and adopted by the House related solely to the President's removal of Stanton. The removal allegedly violated the recently enacted Tenure of Office Act,<sup>41</sup> which also categorized it as a "high misdemeanor."<sup>42</sup>

The House voted on each of the first nine articles separately; the tenth and eleventh articles were adopted the following day.

*Article I* charged that Johnson,

unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should

<sup>35</sup> *Id.* 2617.

<sup>36</sup> *Id.* 2950.

<sup>37</sup> CONG. GLOBE, 39th Cong., 2d Sess. 320-21 (1867).

<sup>38</sup> H.R. REP. NO. 7, 40th Cong., 1st Sess. 59 (1867).

<sup>39</sup> CONG. GLOBE, 40th Cong., 2d Sess. 68 (1867).

<sup>40</sup> CONG. GLOBE, 40th Cong., 2d Sess. 1400 (1868).

<sup>41</sup> Act of March 2, 1867, 14 Stat. 430.

<sup>42</sup> *Id.* § 6.



take care that the laws be faithfully executed, did unlawfully and in violation of the Constitution and laws of the United States, issue an order in writing for the removal of Edwin M. Stanton.

*Article I* concluded that President Johnson had committed "a high misdemeanor in office."<sup>43</sup>

*Articles II and III* characterized the President's conduct in the same terms but charged him with the allegedly unlawful appointment of Stanton's replacement.

*Article IV* charged that Johnson, with intent, unlawfully conspired with the replacement for Stanton and Members of the House of Representatives to "hinder and prevent" Stanton from holding his office.

*Article V*, a variation of the preceding article, charged a conspiracy to prevent the execution of the Tenure of Office Act, in addition to a conspiracy to prevent Stanton from holding his office.

*Article VI* charged Johnson with conspiring with Stanton's designated replacement, "by force to seize, take and possess" government property in Stanton's possession, in violation of both an "act to define and punish certain conspiracies" and the Tenure of Office Act.

*Article VII* charged the same offense, but as a violation of the Tenure of Office Act only.

*Article VIII* alleged that Johnson, by appointing a new Secretary of War, had, "with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War," violated the provisions of the Tenure of Office Act.

*Article IX* charged that Johnson, in his role as Commander in Chief, had instructed the General in charge of the military forces in Washington that part of the Tenure of Office Act was unconstitutional, with intent to induce the General, in his official capacity as commander of the Department of Washington, to prevent the execution of the Tenure of Office Act.

*Article X*, which was adopted by amendment after the first nine articles, alleged that Johnson,

unmindful of the high duties of his office and the dignity and proprieties thereof, . . . designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach, the Congress of the United States, [and] to impair and destroy the regard and respect of all good people . . . for the Congress and legislative power thereof . . .

by making "certain intemperate, inflammatory, and scandalous harangues." In addition the same speeches were alleged to have brought the high office of the President into "contempt, ridicule, and disgrace, to the great scandal of all good citizens."

*Article XI* combined the conduct charged in Article X and the nine other articles to allege that Johnson had attempted to prevent the execution of both the Tenure of Office Act and an act relating to army appropriations by unlawfully devising and contriving means by which he could remove Stanton from office.

<sup>43</sup> For text of articles, see CON. GLOBE, 40th Cong., 2d Sess. 1603-18, 1642 (1868).

*c. Proceedings in the Senate*

The Senate voted only on Articles II, III, and XI, and President Johnson was acquitted on each, 35 guilty—19 not guilty, one vote short of the two-thirds required to convict.<sup>44</sup>

*d. Miscellaneous*

All of the articles relating to the dismissal of Stanton alleged indictable offenses. Article X did not allege an indictable offense, but this article was never voted on by the Senate.

7. DISTRICT JUDGE MARK H. DELAHAY (1873)

*a. Proceedings in the House*

A resolution authorizing an inquiry by the Judiciary Committee respecting District Judge Delahay was adopted by the House in 1872.<sup>45</sup> In 1873 the committee proposed a resolution of impeachment for "high crimes and misdemeanors in office," which the House<sup>46</sup> adopted.

*b. Subsequent Proceedings*

Delahay resigned before articles of impeachment were prepared, and the matter was not pursued further by the House. The charge against him had been described in the House as follows:

The most greivous charge, and that which is beyond all question, was that his personal habits unfitted him for the judicial office, that he was intoxicated off the bench as well as on the bench.<sup>47</sup>

8. SECRETARY OF WAR WILLIAM W. BELKNAP (1876)

*a. Proceedings in the House*

In 1876 the Committee on Expenditures in the War Department<sup>48</sup> unanimously recommended impeachment of Secretary Belknap "for high crimes and misdemeanors while in office," and the House unanimously adopted the resolution.<sup>49</sup>

*b. Articles of Impeachment*

Five articles of impeachment were drafted by the Judiciary Committee<sup>50</sup> and adopted by the House, all relating to Belknap's allegedly corrupt appointment of a military post trader. The House agreed to the articles as a group, without voting separately on each.<sup>51</sup>

*Article I* charged Belknap with "high crimes and misdemeanors in office" for unlawfully receiving sums of money, in consideration for the appointment, made by him as Secretary of War.<sup>52</sup>

*Article II* charged Belknap with a "high misdemeanor in office" for "willfully, corruptly, and unlawfully" taking and receiving money in return for the continued maintenance of the post trader.<sup>53</sup>

*Article III* charged that Belknap was "criminally disregarding his duty as Secretary of War, and basely prostituting his high office to

<sup>44</sup> CONG. GLOBE SUPP., 40th Cong., 2d Sess. 415 (1868).

<sup>45</sup> CONG. GLOBE, 42d Cong., 2d Sess. 1808 (1872).

<sup>46</sup> CONG. GLOBE, 42d Cong., 3d Sess. 1900 (1873).

<sup>47</sup> *Id.*

<sup>48</sup> The Committee was authorized to investigate the Department of the Army generally. 13 CONG. REC. 414 (1876).

<sup>49</sup> 14 CONG. REC. 1426-33 (1876).

<sup>50</sup> 15 CONG. REC. 2081-82 (1876).

<sup>51</sup> *Id.* 2160.

<sup>52</sup> *Id.* 2159.

<sup>53</sup> *Id.*

his lust for private gain," when he "unlawfully and corruptly" continued his appointee in office, "to the great injury and damage of the officers and soldiers of the United States" stationed at the military post. The maintenance of the trader was also alleged to be "against public policy, and to the great disgrace and detriment of the public service."<sup>54</sup>

*Article IV* alleged seventeen separate specifications relating to Belknap's appointment and continuance in office of the post trader.<sup>55</sup>

*Article V* enumerated the instances in which Belknap or his wife had corruptly received "divert large sums of money."<sup>56</sup>

#### *c. Proceedings in the Senate*

The Senate failed to convict Belknap on any of the articles, with votes on the articles ranging from 35 guilty—25 not guilty to 37 guilty—25 not guilty.<sup>57</sup>

#### *d. Miscellaneous*

In the Senate trial, it was argued that because Belknap had resigned prior to his impeachment the case should be dropped. The Senate, by a vote of 37 to 29, decided that Belknap was amenable to trial by impeachment.<sup>58</sup> Twenty-two of the Senators voting not guilty on each article, nevertheless indicated that in their view the Senate had no jurisdiction.<sup>59</sup>

### 9. DISTRICT JUDGE CHARLES SWAYNE (1903–1905)

#### *a. Proceedings in the House*

The House adopted a resolution in 1903 directing an investigation by the Judiciary Committee of District Judge Swayne.<sup>60</sup> The committee held hearings during the next year, and reported a resolution that Swayne be impeached "of high crimes and misdemeanors" in late 1904.<sup>61</sup> The House agreed to the resolution unanimously.

#### *b. Articles of Impeachment*

After the vote to impeach, thirteen articles were drafted and approved by the House in 1905.<sup>62</sup> However, only the first twelve articles were presented to the Senate.<sup>63</sup>

*Article I* charged that Swayne had knowingly filed a false certificate and claim for travel expenses while serving as a visiting judge, "whereby he has been guilty of a high crime and misdemeanor in said office."

*Articles II and III* charged that Swayne, having claimed and received excess travel reimbursement for other trips, had "misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and of a high misdemeanor in office."

*Articles IV and V* charged that Swayne, having appropriated a private railroad car that was under the custody of a receiver of his court

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* 2160.

<sup>57</sup> 19 CONG. REC. 343–57 (1876).

<sup>58</sup> *Id.* 76.

<sup>59</sup> *Id.* 342–57.

<sup>60</sup> 38 CONG. REC. 103 (1903).

<sup>61</sup> 39 CONG. REC. 247–48 (1904).

<sup>62</sup> H.R. REP. NO. 3477, 58th Cong., 3d Sess. (1905).

<sup>63</sup> 39 CONG. REC. 1056–58 (1905).



and used the car, its provisions, and a porter without making compensation to the railroad. "was and is guilty of an abuse of judicial power and of a high misdemeanor in office."

*Articles VI and VII* charged that for periods of six years and nine years, Judge Swayne had not been a bona fide resident of his judicial district, in violation of a statute requiring every federal judge to reside in his judicial district. The statute provided that "for offending against this provision [the judge] shall be deemed guilty of a high misdemeanor." The articles charged that Swayne "willfully and knowingly violated" this law and "was and is guilty of a high misdemeanor in office."

*Articles VIII, IX, X, XI and XII* charged that Swayne improperly imprisoned two attorneys and a litigant for contempt of court. Articles VIII and X alleged that the imprisonment of the attorneys was done "maliciously and unlawfully" and Articles IX and XI charged that these imprisonments were done "knowingly and unlawfully." Article XI charged that the private person was imprisoned "unlawfully and knowingly." Each of these five articles concluded by charging that by so acting, Swayne had "misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and a high misdemeanor in office."

*c. Proceedings in the Senate*

A majority of the Senate voted acquittal on all articles.<sup>64</sup>

10. CIRCUIT JUDGE ROBERT W. ARCHBALD (1912-1913)

*a. Proceedings in the House*

The House authorized an investigation by the Judiciary Committee on Circuit Judge Archbald of the Commerce Court in 1912.<sup>65</sup> The Committee unanimously reported a resolution that Archbald be impeached for "misbehavior and for high crimes and misdemeanors." and the House adopted the resolution, 223 to 1.<sup>66</sup>

*b. Articles of Impeachment*

Thirteen Articles of impeachment were presented and adopted simultaneously with the resolution for impeachment.

*Article I* charged that Archbald "willfully, unlawfully, and corruptly took advantage of his official position . . . to induce and influence the officials" of a company with litigation pending before his court to enter into a contract with Archbald and his business partner to sell them assets of a subsidiary company. The contract was allegedly profitable to Archbald.<sup>67</sup>

*Article II* also charged Archbald with "willfully, unlawfully, and corruptly" using his position as judge to influence a litigant then before the Interstate Commerce Commission (who on appeal would be before the Commerce Court) to settle the case and purchase stock.<sup>68</sup>

*Article III* charged Archbald with using his official position to obtain a leasing agreement from a party with suits pending in the Commerce Court.<sup>69</sup>

<sup>64</sup> *Id.* 3467-72.

<sup>65</sup> 48 CONG. REC. 5242 (1912).

<sup>66</sup> *Id.* 8933.

<sup>67</sup> *Id.* 8904.

<sup>68</sup> *Id.* 8905.

<sup>69</sup> *Id.*

*Article IV* alleged "gross and improper conduct" in that Archbald had (in another suit pending in the Commerce Court) "secretly, wrongfully, and unlawfully" requested an attorney to obtain an explanation of certain testimony from a witness in the case, and subsequently requested argument in support of certain contentions from the same attorney, all "without the knowledge or consent" of the opposing party.<sup>70</sup>

*Article V* charged Archbald with accepting "a gift, reward or present" from a person for whom Archbald had attempted to gain a favorable leasing agreement with a potential litigant in Archbald's court.<sup>71</sup>

*Article VI* again charged improper use of Archbald's influence as a judge, this time with respect to a purchase of an interest in land.

*Articles VII through XII* referred to Archbald's conduct during his tenure as district court judge. These articles alleged improper and unbecoming conduct constituting "misbehavior" and "gross misconduct" in office stemming from the misuse of his position as judge to influence litigants before his court, resulting in personal gain to Archbald. He was also charged with accepting a "large sum of money" from people likely "to be interested in litigation" in his court, and such conduct was alleged to "bring his . . . office of district judge into disrepute."<sup>72</sup> Archbald was also charged with accepting money "contributed . . . by various attorneys who were practitioners in the said court"; and appointing and maintaining as jury commissioner an attorney whom he knew to be general counsel for a potential litigant.<sup>73</sup>

*Article XIII* summarized Archbald's conduct both as district court judge and commerce court judge, charging that Archbald had used these offices "wrongfully to obtain credit," and charging that he had used the latter office to affect "various and diverse contracts and agreements," in return for which he had received hidden interests in said contracts, agreements, and properties.<sup>74</sup>

#### *c. Proceedings in the Senate*

The Senate found Archbald guilty of the charges in five of the thirteen articles, including the catch-all thirteenth. Archbald was removed from office and disqualified from holding any future office.<sup>75</sup>

### 11. DISTRICT JUDGE GEORGE W. ENGLISH (1925-1926)

#### *a. Proceedings in the House*

The House adopted a resolution in 1925 directing an inquiry into the official conduct of District Judge English. A subcommittee of the Judiciary Committee took evidence in 1925 and recommended impeachment.<sup>76</sup> In March 1926, the Judiciary Committee reported an impeachment resolution and five articles of impeachment.<sup>77</sup> The House adopted the impeachment resolution and the articles by a vote of 306 to 62.<sup>78</sup>

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* S906.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> S. Doc. No. 1140, 62d Cong., 3d Sess. 1620-49 (1913).

<sup>76</sup> H.R. Doc. No. 145, 69th Cong., 1st Sess. (1925).

<sup>77</sup> 67 CONG. REC. 6280 (1926).

<sup>78</sup> *Id.* 6735.

Judge English resigned six days before the date set for trial in the Senate. The House Managers stated that the resignation in no way affected the right of the Senate to try the charges, but recommended that the impeachment proceedings be discontinued.<sup>79</sup> The recommendation was accepted by the House, 290 to 23.<sup>80</sup>

### *b. Articles of Impeachment*

*Article I* charged that Judge English "did on divers and various occasions so abuse the powers of his high office that he is hereby charged with tyranny and oppression, whereby he has brought the administration of justice in [his] court . . . into disrepute, and . . . is guilty of misbehavior falling under the constitutional provision as ground for impeachment and removal from office." The article alleged that the judge had "willfully, tyrannically, oppressively and unlawfully" disbarred lawyers practicing before him, summoned state and local officials to his court in an imaginary case and denounced them with profane language, and without sufficient cause summoned two newspapermen to his court and threatened them with imprisonment. It was also alleged that Judge English stated in open court that if he instructed a jury that a man was guilty and they did not find him guilty, he would send the jurors to jail.

*Article II* charged that Judge English knowingly entered into an "unlawful and improper combination" with a referee in bankruptcy, appointed by him, to control bankruptcy proceedings in his district for the benefit and profit of the judge and his relatives and friends, and amended the bankruptcy rules of his court to enlarge the authority of the bankruptcy receiver, with a view to his own benefit.

*Article III* charged that Judge English "corruptly extended favoritism in diverse matters," "with the intent to corruptly prefer" the referee in bankruptcy, to whom English was alleged to be "under great obligations, financial and otherwise."

*Article IV* charged that Judge English ordered bankruptcy funds within the jurisdiction of his court to be deposited in banks of which he was a stockholder, director and depositor, and that the judge entered into an agreement with each bank to designate the bank a depository of interest-free bankruptcy funds if the bank would employ the judge's son as a cashier. These actions were stated to have been taken "with the wrongful and unlawful intent to use the influence of his . . . office as judge for the personal profit of himself" and his family and friends.

*Article V* alleged that Judge English's treatment of members of the bar and conduct in his court during his tenure had been oppressive to both members of the bar and their clients and had deprived the clients of their rights to be protected in liberty and property. It also alleged that Judge English "at diverse times and places, while acting as such judge, did disregard the authority of the laws, and . . . did refuse to allow . . . the benefit of trial by jury, contrary to his . . . trust and duty as judge of said district court, against the laws of the United States and in violation of the solemn oath which he had taken to administer equal and impartial justice." Judge English's conduct in making decisions and orders was alleged to be such "as to excite fear and distrust and to inspire a widespread belief, in and beyond his judicial district

<sup>79</sup> 68 CONG. REC. 297 (1926).

<sup>80</sup> *Id.* 302.



... that causes were not decided in said court according to their merits," "[a]ll to the scandal and disrepute" of his court and the administration of justice in it. This "course of conduct" was alleged to be "misbehavior" and "a misdemeanor in office."

### *c. Proceedings in the Senate*

The Senate, being informed by the Managers for the House that the House desired to discontinue the proceedings in view of the resignation of Judge English, approved a resolution dismissing the proceedings by a vote of 70 to 9.<sup>81</sup>

## 12. DISTRICT JUDGE HAROLD LOUDERBACK (1932-1933)

### *a. Proceedings in the House*

A resolution directing an inquiry into the official conduct of District Judge Louderback was adopted by the House in 1932. A subcommittee of the Judiciary Committee took evidence. The full Judiciary Committee submitted a report in 1933, including a resolution that the evidence did not warrant impeachment, and a brief censure of the Judge for conduct prejudicial to the dignity of the judiciary.<sup>82</sup> A minority consisting of five Members recommended impeachment and moved five articles of impeachment from the floor of the House.<sup>83</sup> The five articles were adopted as a group by a vote of 183 to 143.<sup>84</sup>

### *b. Articles of Impeachment*

*Article I* charged that Louderback "did . . . so abuse the power of his high office, that he is hereby charged with tyranny and oppression, favoritism and conspiracy, whereby he has brought the administration of justice in the court of which he is a judge into disrepute, and by his conduct is guilty of misbehavior." It alleged that Louderback used "his office and power of district judge in his own personal interest" by causing an attorney to be appointed as a receiver in bankruptcy at the demand of a person to whom Louderback was under financial obligation. It was further alleged that the attorney had received "large and exorbitant fees" for his services; and that these fees had been passed on to the person whom Louderback was to reimburse for bills incurred on Louderback's behalf.

*Article II* charged that Louderback had allowed excessive fees to a receiver and an attorney, described as his "personal and political friends and associates," and had unlawfully made an order conditional upon the agreement of the parties not to appeal from the allowance of fees. This was described as "a course of improper and unlawful conduct as a Judge." It was further alleged that Louderback "did not give his fair, impartial, and judicial consideration" to certain objections; and that he "was and is guilty of a course of conduct oppressive and unjudicial."

*Article III* charged the knowing appointment of an unqualified person as a receiver, resulting in disadvantage to litigants in his court.

*Article IV* charged that "misusing the powers of his judicial office for the sole purpose of enriching" the unqualified receiver mentioned in Article III, Louderback failed to give "fair, impartial, and judicial

<sup>81</sup> *Id.* 344, 348.

<sup>82</sup> 76 CONG. REC. 4913 (1933) : H.R. REP. NO. 2065, 72d Cong., 2d Sess. 1 (1933).

<sup>83</sup> 76 CONG. REC. 4914 (1933) : H.R. REP. NO. 2065, 72d Cong., 2d Sess. 13 (1933).

<sup>84</sup> 76 CONG. REC. 4925 (1933).

consideration" to an application to discharge the receiver; that "sitting in a part of the court to which he had not been assigned at the time," he took jurisdiction of a case although knowing that the facts and law compelled dismissal; and that this conduct was "filled with partiality and favoritism" and constituted "misbehavior" and a "misdemeanor in office."

*Article V*, as amended, charged that "the reasonable and probable result" of Louderback's actions alleged in the previous articles "has been to create a general condition of widespread fear and distrust and disbelief in the fairness and disinterestedness" of his official actions. It further alleged that the "general and aggregate result" of the conduct had been to destroy confidence in Louderback's court, "which for a Federal judge to destroy is a crime and misdemeanor of the highest order."<sup>85</sup>

### *c. Proceedings in the Senate*

A motion by counsel for Judge Louderback to make the original *Article V* more definite was consented to by the Managers for the House, resulting in the amendment of that *Article*.<sup>86</sup>

Some Senators who had not heard all the testimony felt unqualified to vote upon *Articles I* through *IV*, but capable of voting on *Article V*, the omnibus or "catchall" article.<sup>87</sup>

Judge Louderback was acquitted on each of the first four articles, the closest vote being on *Article I* (34 guilty, 42 not guilty). He was then acquitted on *Article V*, the vote being 45 guilty, 34 not guilty—short of the two-thirds majority required for conviction.

## 13. DISTRICT JUDGE HALSTED L. RITTER (1933–1936)

### *a. Proceedings in the House*

A resolution directing an inquiry into the official conduct of District Judge Ritter was adopted by the House in 1933.<sup>88</sup> A subcommittee of the Judiciary Committee took evidence in 1933 and 1934. A resolution that Ritter "be impeached for misbehavior, and for high crimes and misdemeanors," and recommending the adoption of four articles of impeachment, was reported to the full House in 1936, and adopted by a vote of 181 to 146.<sup>89</sup> Before trial in the Senate, the House approved a resolution submitted by the House Managers, replacing the fourth original articles with seven amended ones, some charging new offenses.<sup>90</sup>

### *b. Articles of Impeachment*

*Article I* charged Ritter with "misbehavior" and "a high crime and misdemeanor in office." in fixing an exorbitant attorney's fee to be paid to Ritter's former law partner, in disregard of the "restraint of propriety . . . and . . . danger of embarrassment"; and in "corruptly and unlawfully" accepting cash payments from the attorney at the time the fee was paid.

*Article II* charged that Ritter, with others, entered into an "arrangement" whose purpose was to ensure that bankruptcy property

<sup>85</sup> 77 CONG. REC. 1857, 4086 (1933).

<sup>86</sup> *Id.* 1852, 1857.

<sup>87</sup> *Id.* 4082.

<sup>88</sup> *Id.* 4575.

<sup>89</sup> 80 CONG. REC. 3066–3092 (1936).

<sup>90</sup> *Id.* 4597–4601.

would continue in litigation before Ritter's court. Rulings by Ritter were alleged to have "made effective the champertous undertaking" of others, but Ritter was not himself explicitly charged with the crime of champerty or related criminal offenses. Article II also repeated the allegations of corrupt and unlawful receipt of funds and alleged that Judge Ritter "profited personally" from the "excessive and unwarranted" fees, that he had received a free room at a hotel in receivership in his court, and that he "wilfully failed and neglected to perform his duty to conserve the assets" of the hotel.

*Article III*, as amended, charged Ritter with the practice of law while on the bench, in violation of the Judicial Code. Ritter was alleged to have solicited and received money from a corporate client of his old law firm. The client allegedly had large property interests within the territorial jurisdiction of Ritter's court. These acts were described as "calculated to bring his office into disrepute," and as a "high crime and misdemeanor."

*Article IV*, added by the Managers of the House, also charged practice of law while on the bench, in violation of the Judicial Code.

*Articles V and VI*, also added by the Managers, alleged that Ritter had violated the Revenue Act of 1928 by willfully failing to report and pay tax on certain income received by him—primarily the sums described in Articles I through IV. Each failure was described as a "high misdemeanor in office."

*Article VII (former Article IV amended)* charged that Ritter was guilty of misbehavior and high crimes and misdemeanors in office because "the reasonable and probable consequence of [his] actions or conduct . . . as an individual or . . . judge, is to bring his court into scandal and disrepute," to the prejudice of his court and public confidence in the administration of justice in it, and to "the prejudice of public respect for and confidence in the Federal judiciary," rendering him "unfit to continue to serve as such judge." There followed four specifications of the "actions or conduct" referred to. The first two were later dropped by the Managers at the outset of the Senate trial; the third referred to Ritter's acceptance (not alleged to be corrupt or unlawful) of fees and gratuities from persons with large property interests within his territorial jurisdiction. The fourth, or omnibus, specification was to "his conduct as detailed in Articles I, II, III and IV hereof, and by his income-tax evasions as set forth in Articles V and VI hereof."

Before the amendment of Article VII by the Managers, the omnibus clause had referred only to Articles I and II, and not to the criminal allegations about practice of law and income tax evasion.

### *c. Proceedings in the Senate*

Judge Ritter was acquitted on each of the first six articles, the guilty vote on Article I falling one vote short of the two-thirds needed to convict. He was then convicted on Article VII—the two specifications of that Article not being separately voted upon—by a single vote, 56 to 28.<sup>91</sup> A point of order was raised that the conviction under Article VII was improper because on the acquittals on the substantive charges of Articles I through VI. The point of order was overruled by the Chair, the Chair stating, "A point of order is made as to Article VII

<sup>91</sup> S. Doc. No. 200, 74th Cong., 2d Sess. 637-38 (1936).



in which the respondent is charged with general misbehavior. It is a separate charge from any other charge.”<sup>92</sup>

*d. Miscellaneous*

After conviction, Judge Ritter collaterally attacked the validity of the Senate proceedings by bringing in the Court of Claims an action to recover his salary. The Court of Claims dismissed the suit on the ground that no judicial court of the United States has authority to review the action of the Senate in an impeachment trial.<sup>93</sup>

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<sup>92</sup> *Id.* 638.

<sup>93</sup> *Ritter v. United States*, 84 Ct. Cl. 293, 300, *cert denied*, 300 U.S. 668 (1936).

## APPENDIX C

## SECONDARY SOURCES ON THE CRIMINALITY ISSUE

- The Association of the Bar of the City of New York, *The Law of Presidential Impeachment and Removal* (1974). The study concludes that impeachment is not limited to criminal offenses but extends to conduct undermining governmental integrity.
- Bayard, James, *A Brief Exposition of the Constitution of the United States*, (Hogan & Thompson, Philadelphia, (1833). A treatise on American constitutional law concluding that ordinary legal forms ought not to govern the impeachment process.
- Berger, Raoul, *Impeachment: The Constitutional Problems*, (Harvard University Press, Cambridge, 1973). A critical historical survey of English and American precedents concluding that criminality is not a requirement for impeachment.
- Bestor, Arthur, "Book Review, Berger, *Impeachment: The Constitutional Problems*," 49 *Wash. L. Rev.* 225 (1973). A review concluding that the thrust of impeachment in English history and as viewed by the framers was to reach political conduct injurious to the commonwealth, whether or not the conduct was criminal.
- Boutwell, George, *The Constitution of the United States at the End of the First Century*, (D. C. Heath & Co., Boston, 1895). A discussion of the Constitution's meaning after a century's use, concluding that impeachment had not been confined to criminal offenses.
- Brant, Irving, *Impeachment: Trials & Errors*, (Alfred Knopf, New York, 1972). A descriptive history of American impeachment proceedings, which concludes that the Constitution should be read to limit impeachment to criminal offenses, including the common law offense of misconduct in office and including violations of oaths of office.
- Bryce, James, *The American Commonwealth*, (Macmillan Co., New York, 1931) (reprint). An exposition on American government concluding that there was no final decision as to whether impeachment was confined to indictable crimes. The author notes that in English impeachments there was no requirement for an indictable crime.
- Burdick, Charles, *The Law of the American Constitution*, (G. T. Putnam & Sons, New York, 1922). A text on constitutional interpretation concluding that misconduct in office by itself is grounds for impeachment.
- Dwight, Theodore, "Trial by Impeachment," 6 *Am. L. Reg. (N.S.)* 257 (1867). An article on the eve of President Andrew Johnson's impeachment concluding that an indictable crime was necessary to make out an impeachable offense.
- Etridge, George, "The Law of Impeachment," 8 *Miss. L. J.* 283 (1936). An article arguing that impeachable offenses had a definite meaning discoverable in history, statute and common law.

- Feerick, John, "Impeaching Federal Judges: A Study of the Constitutional Provisions," 39 *Fordham L. Rev.* 1 (1970). An article concluding that impeachment was not limited to indictable crimes but extended to serious misconduct in office.
- Fenton, Paul, "The Scope of the Impeachment Power," 65 *Nw. U. L. Rev.* 719 (1970). A law review article concluding that impeachable offenses are not limited to crimes, indictable or otherwise.
- Finley, John and John Sanderson, *The American Executive and Executive Methods*, (Century Co., New York, 1908). A book on the presidency concluding that impeachment reaches misconduct in office, which was a common law crime embracing all improprieties showing unfitness to hold office.
- Foster, Roger, *Commentaries on the Constitution of the United States*, (Boston Book Co., Boston, 1896), vol. I. A discussion of constitutional law concluding that in light of English and American history any conduct showing unfitness for office is an impeachable offense.
- Lawrence, William, "A Brief of the Authorities upon the Law of Impeachable Crimes and Misdemeanors," *Congressional Globe Supplement*, 40th Congress, 2d Session, at 41 (1868). An article at the time of Andrew Johnson's impeachment concluding that indictable crimes were not needed to make out an impeachable offense.
- Note, "The Exclusiveness of the Impeachment Power under the Constitution," 51 *Harv. L. Rev.* 330 (1937). An article concluding that the Constitution included more than indictable crimes in its definition of impeachable offenses.
- Note, "Vagueness in the Constitution: The Impeachment Power," 25 *Stan. L. Rev.* 908 (1973). This book review of the Berger and Brant books concludes that neither author satisfactorily answers the question whether impeachable offenses are limited to indictable crimes.
- Pomeroy, John, *An Introduction to the Constitutional Law of the United States*, (Hurd and Houghton, New York 1870). A consideration of constitutional history which concludes that impeachment reached more than ordinary indictable offenses.
- Rawle, William, *A View of the Constitution of the United States*, (P. H. Nicklin, Philadelphia, 1829, 2 vol. ed.). A discussion of the legal and political principles underlying the Constitution, concluding on this issue that an impeachable offense need not be a statutory crime, but that reference should be made to non-statutory law.
- Rottschaefer, Henry, *Handbook of American Constitutional Law*, (West, St. Paul, 1939). A treatise on the Constitution concluding that impeachment reached any conduct showing unfitness for office, whether or not a criminal offense.
- Schwartz, Bernard, *A Commentary on the Constitution of the United States*, vol. I, (Macmillan, New York, 1963). A treatise on various aspects of the Constitution which concludes that there was no settled definition of the phrase "high Crimes and Misdemeanors," but that it did not extend to acts merely unpopular with Congress. The author suggests that criminal offenses may not be the whole content of the Constitution on this point, but that such offenses should be a guide.



- Sheppard, Furman, *The Constitutional Textbook*, (George W. Childs, Philadelphia, 1855). A text on Constitutional meaning concluding that impeachment was designed to reach any serious violation of public trust, whether or not a strictly legal offense.
- Simpson, Alex., *A Treatise on Federal Impeachments*, (Philadelphia Bar Association, Phila., 1916) (reproduced in substantial part in 64 *U.Pa.L.Rev.* 651 (1916)). After reviewing English and American impeachments and available commentary, the author concludes that an indictable crime is not necessary to impeach.
- Story, Joseph, *Commentaries on the Constitution of the United States*, vol. 1, 5th edition, (Little, Brown & Co., Boston 1891). A commentary by an early Supreme Court Justice who concludes that impeachment reached conduct not indictable under the criminal law.
- Thomas, David, "The Law of Impeachment in the United States," 2 *Am. Pol. Sci. Rev.* 378 (1908). A political scientist's view on impeachment concluding that the phrase "high Crimes and Misdemeanors" was meant to include more than indictable crimes. The author argues that English parliamentary history, American precedent, and common law support his conclusion.
- Tucker, John, *The Constitution of the United States*, (Callaghan & Co., Chicago, 1899), vol. 1. A treatise on the Constitution concluding that impeachable offenses embrace willful violations of public duty whether or not a breach of positive law.
- Wasson, Richard, *The Constitution of the United States: Its History and Meaning* (Bobbs-Merrill, Indianapolis, 1927). A short discussion of the Constitution concluding that criminal offenses do not exhaust the reach of the impeachment power of Congress. Any gross misconduct in office was thought an impeachable offense by this author.
- Watson, David, *The Constitution of the United States*, (Callaghan & Co., Chicago, 1910), volumes I and II. A treatise on Constitutional interpretation concluding that impeachment reaches misconduct in office whether or not criminal.
- Wharton, Francis, *Commentaries on Law*, (Kay & Bro., Philadelphia, 1884). A treatise by an author familiar with both criminal and Constitutional law. He concludes that impeachment reached willful misconduct in office that was normally indictable at common law.
- Willoughby, Westel, *The Constitutional Law of the United States*, vol. III, 2nd edition. (Baker, Voorhis & Co., New York, 1929). The author concludes that impeachment was not limited to offenses made criminal by federal statute.
- Yankwich, Leon, "Impeachment of Civil Officers under the Federal Constitution," 26 *Geo. L. Rev.* 849 (1938). A law review article concluding that impeachment covers general official misconduct whether or not a violation of law.

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### APPENDIX III

#### PROCEDURES FOR HANDLING IMPEACHMENT INQUIRY MATERIAL

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## **Procedures for Handling Impeachment Inquiry Material**

1. The chairman, the ranking minority member, the special counsel, and the counsel to the minority shall at all times have access to and be responsible for all papers and things received from any source by subpoena or otherwise. Other members of the committee shall have access in accordance with the procedures hereafter set forth.

2. At the commencement of any presentation at which testimony will be heard or papers and things considered, each committee member will be furnished with a list of all papers and things that have been obtained by the committee by subpoena or otherwise. No member shall make the list or any part thereof public unless authorized by a majority vote of the committee, a quorum being present.

3. The special counsel and the counsel to the minority, after discussion with the chairman and the ranking minority member, shall initially recommend to the committee the testimony, papers, and things to be presented to the committee. The determination as to whether such testimony, papers, and things shall be presented in open or executive session shall be made pursuant to the rules of the House.

4. Before the committee is called upon to make any disposition with respect to the testimony or papers and things presented to it, the committee members shall have a reasonable opportunity to examine all testimony, papers, and things that have been obtained by the inquiry staff. No member shall make any of that testimony or those papers or things public unless authorized by a majority vote of the committee, a quorum being present.

5. All examination of papers and things other than in a presentation shall be made in a secure area designated for that purpose. Copying, duplicating, or removal is prohibited.

6. Any committee member may bring additional testimony, papers, or things to the committee's attention.

7. Only testimony, papers, or things that are included in the record will be reported to the House; all other testimony, papers, or things will be considered as executive session material.

## **Rules for the Impeachment Inquiry Staff**

1. The staff of the impeachment inquiry shall not discuss with anyone outside the staff either the substance or procedure of their work or that of the committee.

2. Staff offices on the second floor of the Congressional Annex shall operate under strict security precautions. One guard shall be on duty at all times by the elevator to control entry. All persons entering the floor shall identify themselves. An additional guard shall be posted at night for surveillance of the secure area where sensitive documents are kept.

3. Sensitive documents and other things shall be segregated in a secure storage area. They may be examined only at supervised reading facilities within the secure area. Copying or duplicating of such documents and other things is prohibited.

4. Access to classified information supplied to the committee shall be limited by the special counsel and the counsel to the minority to those staff members with appropriate security clearances and a need to know.

5. Testimony taken or papers and things received by the staff shall not be disclosed or made public by the staff unless authorized by a majority of the committee.

6. Executive session transcripts and records shall be available to designated committee staff for inspection in person but may not be released or disclosed to any other person without the consent of a majority of the committee.

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## APPENDIX IV

WORK OF THE IMPEACHMENT INQUIRY STAFF AS OF MARCH 1, 1974

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## Part A

### I. PURPOSE OF REPORT

The Judiciary Committee met with Special Counsel John Doar and Minority Counsel Albert Jenner on January 29 and 31, 1974, to discuss the status of the impeachment inquiry. The chairman instructed the impeachment inquiry staff to deliver a status report on the factual investigation (but not the facts discovered) as of March 1, 1974.

As outlined in the report of the staff dated February 5, 1974, the investigation has been organized into six areas of inquiry. Within each area, further categorization by subject has been undertaken. The work on each subject has focused primarily on an identification and analysis of pertinent testimony and materials from other investigations.

In each subject area, individual staff members have been preparing working papers bringing together the materials from the other investigations and additional sources—designed to guide the future course of this inquiry.

The reports do not contain any conclusions. Similarly, nothing in this report summarizing the investigation to date should be construed to reflect conclusions or judgments by the staff concerning the relative gravity of any allegations being investigated, the credibility of any evidence available to the staff, or the existence of any wrongdoing.

These reports are now being carefully reviewed by senior staff members for the purpose of identifying what factual areas to concentrate on and what additional facts need to be gathered.

The staff is also engaged in preparing a number of legal memoranda for the benefit of the committee.

### II. STATUS OF THE INQUIRY IN SPECIFIC FACTUAL AREAS

#### A. ALLEGATIONS CONCERNING DOMESTIC SURVEILLANCE ACTIVITIES CONDUCTED BY OR AT THE DIRECTION OF THE WHITE HOUSE

(1) The activities of John Caulfield and Anthony Ulasewicz in carrying out surveillance and intelligence activities allegedly at the direction of the White House, including the formation of the plan for the fire bombing of the Brookings Institution and the plan to create a private corporation with security and intelligence gathering capabilities called Operation Sandwedge. Not included in this category are the allegations concerning the use of Mr. Ulasewicz as a conduit for payments to the Watergate defendants. [See C (4) p. 4.]

(2) Formation and activities of the Special Investigative Unit (the "Plumbers"), including the burglary of the office of Dr. Lewis Fielding.

(3) The 17 wiretaps instituted in 1969, the wiretaps of various newsmen and the wiretaps alleged to have been conducted by G.

Gordon Liddy. This category includes the background, instigation, authorization and disposition of the wiretaps, including the concealment of the wiretap records and their subsequent recovery.

(4) The Dita Beard incident, including the allegation that G. Gordon Liddy was responsible for Mrs. Beard's disappearance from Washington and her seclusion in a Denver hospital, and the report that E. Howard Hunt interviewed her before her public repudiation of the "Dita Beard Memo."

(5) The approach to Judge Byrne during the conduct of the *Ellsberg* trial, the events surrounding the eventual disclosure to the court of the break-in of Dr. Fielding's office, and the events surrounding the disclosure of electronic surveillance of Morton Halperin.

(6) The "Huston Plan", the Inter-Agency Evaluation Committee and related activities.

Material analyzed and organized in this factual area comes from 12 volumes of the public records of the Senate Select Committee ("SSC"), the closed files and interview files of the SSC, and the weekly compilation of Presidential Documents; depositions, pleadings, briefs and other public records in 10 civil and criminal cases related to the Watergate break-in or involving persons relevant to the inquiry (*Halperin v. Kissinger*, *Democratic National Committee v. McCord*, *Ellsberg v. Mitchell*, *People v. Ehrlichman*, *United States v. Krogh*, *United States v. Russo*, et al., *United States v. Segretti*, *United States v. Chapin*, *Common Cause v. Finance Committee to Re-Elect the President*, and *United States v. Mitchell*); transcripts of hearings before the Senate Foreign Relations Committee on the nomination of Henry Kissinger to be Secretary of State; before the Senate Judiciary Committee on the nominations of Richard Kleindienst to be Attorney General, and L. Patrick Gray to be Director of the FBI; on the CIA before the Senate Appropriations Committee, the Senate Armed Services Committee, the Senate Foreign Relations Committee, and the House Armed Services Committee; before the Senate Judiciary Committee on the Special Prosecutor; and before the Senate Subcommittee on Investigations of the Committee on Interstate and Foreign Commerce on the independence of the SEC; various secondary sources, including the *New York Times Index* and other news accounts and summaries. Staff members also have conferred with attorneys in the Los Angeles District Attorney's office on the activities of the Plumbers in connection with the Fielding break-in.

Organization and analysis of the evidence by task force attorneys contained in these sources is substantially complete. Requests for various materials have been made to the Senate Foreign Relations Committee, the House Armed Services Committee, the Senate Subcommittee on Administrative Practice and Procedure, the Senate Permanent Subcommittee on Investigations, and the CIA.

The next stage in the inquiry in this area is for senior members of the staff to review the material thus far obtained to determine what inquiries should be pursued fully, what witnesses need to be interviewed and what additional documents in the possession of the White House or other departments of the executive branch need to be examined. Letters from the chairman have been sent to Secretary of State Kissinger, Secretary of Defense Schlesinger, and director of the CIA Colby requesting security clearances required to examine some of these documents.



Arrangements for interviewing witnesses have begun. The staff faces the usual problem of coordinating the interviews.

**B. ALLEGATIONS CONCERNING INTELLIGENCE ACTIVITIES CONDUCTED BY OR AT THE DIRECTION OF THE WHITE HOUSE FOR THE PURPOSES OF THE PRESIDENTIAL ELECTION OF 1972**

(1) The employment and supervision of Donald Segretti, allegations concerning campaign "dirty tricks", and the relationship of Mr. Segretti to E. Howard Hunt and Dwight Chapin.

(2) Allegations concerning the cover-up of the activities of Donald Segretti, including discovery by the press and the FBI of the activities of Mr. Segretti, and allegations concerning the concealment of such activities by White House personnel.

(3) The Diem Cables. Allegations that E. Howard Hunt prepared forged diplomatic cables tying the Kennedy Administration to the assassination of President Diem.

(4) Miscellaneous campaign intelligence activities by the Committee to Re-Elect the President, including allegations concerning campaign intelligence and surveillance activities as well as "dirty tricks" allegedly conducted at the instance of the Committee to Re-Elect the President, such as the two "Sedan Chair" operations and related matters.

Materials examined include the testimony contained in the 12 volumes of the SSC hearings; the closed files and interview files of the SSC; the public documents, depositions, briefs and pleadings files in the cases of *Carroll v. Ehrlichman*, *Caulfield and Ulasewicz*; *Democratic National Committee v. McCord. et al.*; *United States v. Segretti*; and *United States v. Chapin*; FBI reports of interviews with relevant witnesses; the logs and diaries of Donald Segretti; relevant memoranda from or to persons allegedly involved in the activities under investigation; the confirmation hearings of L. Patrick Gray III before the Senate Judiciary Committee; the weekly compilation of Presidential Documents, and various media accounts and other secondary sources.

Review of the preliminary inquiry reports is underway to determine precisely what additional evidence and witness interviews are needed in order to complete these investigations.

**C. ALLEGATIONS CONCERNING THE WATERGATE BREAK-IN AND RELATED ACTIVITIES, INCLUDING ALLEGED EFFORTS BY PERSONS IN THE WHITE HOUSE AND OTHERS TO "COVERUP" SUCH ACTIVITIES AND OTHERS**

(1) The development of the plan to provide the Committee to Re-Elect the President with an intelligence gathering capability for the 1972 Presidential Campaign, including the presentation of various plans by G. Gordon Liddy.

(2) Destruction of evidence immediately following the Watergate break-in of June 17, 1972.

(3) Allegations concerning the custody, removal and destruction of the files in E. Howard Hunt's safe in the Executive Office Building, and subsequent efforts to conceal those events.

(4) Allegations concerning the secret delivery of substantial sums of money to the seven Watergate defendants, their attorneys and their agents, as well as assurances respecting executive clemency allegedly made to certain of the defendants.

(5) Allegations concerning attempts by the White House to involve the CIA in an attempt to block or limit the scope of the FBI's investigation of the Watergate break-in.

(6) Jeb Magruder's testimony before the grand jury and at the Watergate trial, including the alleged decision to offer perjured testimony to the Watergate grand jury and at the Watergate trial and steps taken to implement that decision.

(7) The alleged attempts by the White House to have the CIA retrieve materials delivered by it to the Department of Justice following the Watergate break-in, including a packet of photographs containing evidence of the break-in of Dr. Fielding's office.

(8) The Gray Confirmation Hearings. This involves the series of disclosures made during the Senate Judiciary Committee hearings on the confirmation of L. Patrick Gray III.

(9) Watergate and aftermath, February 25, 1973, to July 16, 1973, including the response of various individuals to events arising out of the gradual disclosure during this period of the scope of the Watergate incident and related events.

(10) The formation of the Special Prosecutor's Office, the agreements and understandings with respect to that office, and the breakdown of those agreements and understandings.

(11) The removal of Special Prosecutor Archibald Cox following his refusal to acquiesce in the White House demands that he desist from further attempts to subpoena tapes and documents from the White House.

(12) White House tapes, including an analysis of the information that could reasonably be expected to be contained in the tapes originally subpoenaed by the SSC and the Special Prosecutor's Office and a review of the efforts to obtain those tapes, their availability and current status.

(13) The apparent obliteration of 18½ minutes of the tape recording of Presidential conversations on June 20, 1972.

The basic sources for the preliminary phase of this inquiry are the 12 volumes of public SSC testimony, with exhibits; the closed files of the SSC, including executive session testimony; the three volumes of testimony given before the House and Senate Judiciary Committees relating to the Office of the Special Prosecutor; the testimony before the Senate Judiciary Committee on the nomination of L. Patrick Gray III, to be Director of the FBI, Richard Kleindienst to be Attorney General, and Elliot Richardson to be Attorney General; the depositions in the Watergate-related civil suits; and the testimony and exhibits in the Watergate-related criminal prosecutions, including proceedings relating to tape recordings of Presidential conversations.

The task force charged with investigating this general area has nearly completed the task of examining and digesting available testimony and other information in the public domain and in the closed files of the SSC and other congressional committees. This information is contained in reports currently being reviewed by senior members of the staff.

Testimony and exhibits sealed by court order in Watergate-related litigation have not yet been obtained.

**D. ALLEGATIONS CONCERNING IMPROPRIETIES IN CONNECTION WITH THE PERSONAL FINANCES OF THE PRESIDENT**

Preliminary reports have been completed on the following subjects: the President's gift of private papers; the sale of the President's New York apartment; and the improvements to the Key Biscayne and San Clemente properties. These reports do not include a review of the material in the files of the Joint Committee on Internal Revenue Taxation.

Material from congressional sources examined includes transcripts of hearings before the Government Activities Subcommittee of the House Committee on Government Operations and the Treasury, Postal Service, and General Government Subcommittee of the House Appropriations Committee. Other material reviewed includes the Comptroller General's report entitled "Protection of the President at Key Biscayne and San Clemente (with Information on Protection of Past Presidents)," and various accounts in the news media.

For several months the Federal income tax affairs of the President have been the subject of an extensive investigation by the Joint Committee on Internal Revenue Taxation and its highly qualified staff. The results of that investigation will become available shortly. The inquiry staff is prepared to begin immediately to assimilate the results of the Joint Committee's investigation, as they become available.

Meanwhile, the inquiry staff is preparing tentative lists of witnesses to be interviewed and documents to be sought.

**E. ALLEGATIONS CONCERNING EFFORTS BY THE WHITE HOUSE TO USE AGENCIES OF THE EXECUTIVE BRANCH FOR POLITICAL PURPOSES, AND ALLEGED WHITE HOUSE INVOLVEMENT WITH ELECTION CAMPAIGN CONTRIBUTIONS**

(1) Allegations that contributions to support the President's reelection campaign were given for the purpose of purchasing ambassadorships.

(2) Allegations of White House involvement with illegal campaign contributions exacted from corporations under pressure of threats of governmental retaliation or promises of governmental favors.

(3) Allegations concerning illegal campaign contributions received from foreign nationals in exchange for promises of favorable treatment by Government agencies.

(4) Allegations that illegal campaign contributions were received from labor unions.

(5) Allegations that campaign contributions were received from persons in exchange for business with the Federal Government.

(6) Allegations that in return for a pledge of campaign contributions the President ordered dairy import quotas to be lowered and price support levels to be raised.

(7) Allegations that, in return for support during the 1972 Presidential campaign, the sentences of various prisoners were commuted.



(8) Allegation that the Comptroller of the Currency granted a bank charter to a Minnesota bank in return for campaign contributions.

(9) Allegations that the White House caused friends of the President to be given favored treatment by the Comptroller of the Currency.

(10) Allegations that lawsuits were not prosecuted by the Environmental Protection Agency because of campaign contributions on behalf of the corporations involved.

(11) Allegations that attempts were made by the White House to use the Federal Communications Commission to control and retaliate against media criticism.

(12) Allegations of attempts to obtain campaign contributions in return for promises of assistance with the Federal Housing Administration.

(13) Allegations that attempts were made by the White House to use the Internal Revenue Service to harass "enemies" of the administration and to prevail upon the IRS to be lenient toward friends of the President and to take positions on tax matters favorable to various entities for political purposes.

(14) Allegations that the Department of Justice failed to prosecute certain lawsuits as a result of campaign contributions by defendants.

(15) Allegations that administration officials caused the Antitrust Division to permit various mergers and acquisitions to go unchallenged because the participants made campaign contributions to or had personal or political connections with the President.

(16) Allegations that the White House attempted to use the Antitrust Division to control or retaliate against media criticism.

(17) Allegations that an antitrust suit against International Telephone and Telegraph Corporation was settled in return for a pledge of financial help toward the cost of conducting the 1972 Republican National Convention in San Diego and that perjury may have been committed by several administration officials during the Senate hearings on the nomination of Richard Kleindienst as Attorney General.

(18) Allegation that the Antitrust Division dropped an investigation of a corporation because its owner was a friend of the President.

(19) Allegations that Attorney General Mitchell caused the Antitrust Division to substitute civil for criminal charges against a defendant because of a pledge of financial assistance to the Republican Party.

(20) Allegations that a corporation obtained permission to increase prices after one of its principals made a substantial campaign contribution.

(21) Allegations that the White House exerted influence on various Federal agencies to direct their efforts in such a manner as to promote improperly the President's re-election.

(22) Allegations that the White House suppressed criminal proceedings against certain recipients of aid from the Small Business Administration for political reasons, and allegations of favoritism in the Small Business Administration and loan program for persons who supported the President's re-election campaign.

(23) Allegations that the White House participated in the solicitation or receipt of campaign contributions made by Robert L. Vesco, involved in the pending criminal action in New York against John Mitchell and Maurice Stans.

(24) Allegations that preferential treatment was obtained from the Securities and Exchange Commission, the Department of Justice and other agencies to certain individuals who had given political support.

(25) Allegation that the Department of Commerce failed to put into effect certain safety standards because of contributions by the industry involved to the President's re-election campaign.

(26) Allegation that in exchange for a contribution to the President's re-election campaign the Department of the Interior failed to revoke an import allocation grant to an oil corporation.

With respect to all of these matters the staff has completed a preliminary review of material on the public record and from congressional sources.

As a result of our preliminary inquiry, formal requests for necessary documents and files have been sent by the chairman to the Secretary of Agriculture, the Secretary of the Interior, the Attorney General (with respect to antitrust matters only), the Federal Communications Commission, the Comptroller of the Currency, the Cost of Living Council, and the Environmental Protection Agency.

All materials requested from the Comptroller of the Currency have been delivered to the staff. Both the Secretary of Agriculture, by General Counsel to the Department of Agriculture, and the Secretary of the Interior, by the Solicitor of the Department of the Interior, have informed the staff that a response to the committee's request will come from Mr. James St. Clair, Special Counsel to the President. Appointments have been or are being made for meetings between members of the staff and the Federal Communications Commission, the Cost of Living Council, and the Environmental Protection Agency to discuss provision of the material requested to the staff. The Attorney General has advised the Special Counsel that he will respond directly to the chairman within several days. He has advised that he has two concerns: First, that disclosure will not endanger any of the prosecutions or investigations of the Special Prosecutor; second, that disclosure will not prejudice any pending or contemplated antitrust actions.

Further requests will be made this week to various agencies including the Small Business Administration, the Federal Home Loan Bank, and the Attorney General (with respect to criminal, pardon and parole matters). It is also expected that material relating to the 1972 Presidential campaign will be requested from the National Archives.

#### F. ALLEGATIONS CONCERNING OTHER MISCONDUCT

(1) The bombing of Cambodia. This category involves United States bombing in Cambodia between March 1969 and August 1973, and the recording and disclosure of that bombing. A review has been made of State and Federal litigation in which the legality of executive action in bombing and conducting alleged acts of war in Cambodia has been challenged. A summary is being prepared of the legal issues and doctrines on which these lawsuits turn, the results of the particular lawsuits, and compliance by the executive branch with judicial orders resulting from the litigation. The public statements and congressional testimony of executive branch officials, including those within the Department of State, Department of Defense, and the Executive

Office of the President are being reviewed. Classified material presented to the Senate Foreign Relations Committee and Senate Armed Services Committee will be reviewed as it becomes available. Interviews of Federal civil and military personnel may be undertaken with respect both to the secrecy of the bombing and to the reporting thereof as well as past reporting practices concerning possibly analogous activities.

(2) The impoundment of funds. This category is concerned with impoundments or refusal of the executive branch to spend funds appropriated by Congress. The approximately 30 lawsuits in which impoundments of funds by the executive branch have been challenged are being reviewed. A summary is being prepared of the legal issues involved in these lawsuits, the resolution of particular lawsuits, and executive branch compliance with court orders and decisions in this litigation. Practices in past administrations with respect to impoundment of funds are also being studied.

(3) The dismantling of the Office of Economic Opportunity. A review has been made of the pleadings, opinions, and decisions and orders in *Senator Harrison A. Williams, Jr., et al. v. Phillips, Local 2816 AFGE, et al. v. Phillips*, and related lawsuits concerning Executive action taken to dismantle the Office of Economic Opportunity, and of compliance by the executive branch with judicial decisions and orders in these cases.

Within the next 2 weeks senior members of the staff will determine which matters should be pursued further.

### III. SUMMARY

The special inquiry staff submitted a report to the Judiciary Committee on February 5, 1974, outlining the method of organization and operation. That method remains unchanged.

On February 21 the inquiry staff received a list of the recordings, documents and other materials that the Special Prosecutor has received from the White House.

On February 25 we requested from Mr. St. Clair certain recordings of Presidential conversations, certain transcripts of Presidential conversations, as well as other documents furnished to the Special Prosecutor by the President.

We also asked for a few additional documents and things that we believed were necessary to our inquiry.

We also asked Mr. St. Clair to outline generally how White House files, Presidential papers, and Presidential conversations and memoranda were indexed. We had discussed the matter of indexing at our first conversation with Mr. St. Clair.



We have not received any of the material requested but have been advised by letter from Mr. St. Clair that we will receive an answer to our request on Wednesday of this week. There are additional specific items needed from the White House. We are preparing requests now. We also have requested, but not received, a list of items sought by the Special Prosecutor, but not furnished by the White House. This list may be useful in determining what additional materials to include in our requests.

One of the principal aims of the staff during the next 2 weeks will be to determine which factual categories require further investigation and study. By eliminating those categories that do not appear to warrant additional inquiry the staff can focus its resources to give the more important subjects the preparation, investigation, and analysis required.

It is not yet possible to predict a date when this inquiry will be completed.

## Part B

### SPECIAL INQUIRY STAFF AND BIOGRAPHIES OF COUNSEL

#### SPECIAL INQUIRY STAFF <sup>1</sup>

Counsel.....	43
Investigators.....	4
Research Assistants:	
Organization of central files and chronology.....	9
Acquisition of court transcripts and other documents.....	2
Legal research.....	1
Clippings and distribution of newspaper articles and Congressional Record.....	1
Subtotal.....	13
Public Information Director.....	1
Congressional Liaison.....	1
Security Director.....	1
Administration.....	3
Secretaries.....	25
Clerks:	
Mail.....	4
Assistance with chronological file.....	1
Xerox.....	2
Messenger, Xerox, legal library.....	3
Subtotal.....	10
Total.....	101

<sup>1</sup> The staff also includes five part-time clerical employees.

## COUNSEL—43

Fred Altshuler	R. L. Smith McKeithen
Thomas Bell	Robert Murphy
William Paul Bishop	Bernard W. Nussbaum, <i>Senior</i>
Robert Brown	<i>Associate Special Counsel</i>
Richard Cates, <i>Senior Associate</i>	James B. F. Oliphant
<i>Special Counsel</i>	Richard H. Porter
Michael Conway	George Rayborn
Rufus Cormier	James Reum
Edward Lee Dale	Hillary Rodham
John B. Davidson	Robert Sack
Evan Davis	Stephen Sharp
John Doar, <i>Special Counsel</i>	Robert Shelton
Samuel Garrison III, <i>Deputy Minority Counsel</i>	Jared Stamell
Constantine Gekas	Roscoe Starek
Richard Gill	Gary Sutton
Dagmar Hamilton	Edward Szukelewicz
David Hanes	Theodore Robert Tetzlaff <sup>1</sup>
Albert E. Jenner, Jr., <i>Special Minority Counsel</i>	Robert Trainor
John Kennahan	Jean Traylor
Terry Rhodes Kirkpatrick <sup>1</sup>	Ben A. Wallis, Jr. <sup>1</sup>
John Labovitz	William Weld
Lawrence Lucchino <sup>1</sup>	William White
	Joseph A. Woods, Jr., <i>Senior Associate Special Counsel</i>

<sup>1</sup> The résumés of the four counsels employed since February 5, 1974, follow.

## TERRY RHODES KIRKPATRICK

Residence: 23 Nottingham Road, Little Rock, Arkansas 72201

Born: Alexandria, Virginia, November 29, 1947

Family status: Married to Rafael Guzman. No children

Education: University of Oklahoma, Norman, Oklahoma, B.A., 1969;  
University of Arkansas Law School, Fayetteville, Arkansas, J.D., 1972

Former employment: 1973–Present, Special Assistant, Criminal Matters, Arkansas. Supreme Court, Little Rock, Arkansas. 1972–73, Partner, White & Kirkpatrick, Fayetteville, Arkansas. 1972, Assistant Public Defender, Sebastian County Public Defender's Office, Fort Smith, Arkansas

Admitted to bar: 1972, Arkansas

## LAWRENCE LUCCHINO

Residence: 519 Susanna Court, Pittsburgh, Pennsylvania 15207

Born: Pittsburgh, Pennsylvania, September 6, 1945

Family status: Single

Education: Princeton University, A.B., 1967; Yale Law School, J.D., 1972

Former employment: 1972, Associate, McCutchen, Doyle, Brown and Enersen, San Francisco, California

Admitted to bar: 1973, California; 1973, Pennsylvania



## THEODORE ROBERT TETZLAFF

Residence: 2020 N. Lincoln Park West, Chicago, Illinois 60614

Born: Milwaukee, Wisconsin, February 27, 1944

Family status: Single

Education: Princeton University, A.B., 1966; Yale Law School, LL.B., 1969

Former employment: 1973-Present, Associate, Jenner & Block, Chicago, Illinois (on leave of absence). 1972-73, Associate Director (Acting), Office of Economic Opportunity and Director of the Federal Office of Legal Services, Washington, D.C., 1971, Consultant and Special Assistant to the Director, Federal Office of Legal Services, Washington, D.C., 1970, Legislative Assistant, The Honorable John Brademas, U.S. House of Representatives, Washington, D.C. 1970, Executive Director, National Conference on Police Community Relations, Los Angeles, California. 1969, Reginald Heber Smith Community Lawyer Fellowship, Chicago, Illinois

Admitted to bar: 1969, Indiana; 1969, District of Columbia

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 BEN A. WALLIS, JR.

Residence: 9734 Shadydale Lane, Dallas, Texas

Born: Llano County, Texas, April 27, 1936

Family status: Married to Margaret Wallis; no children

Education: University of Texas, Austin, Texas, BB.A., 1961 University of Texas School of Law, J.D., 1966

Former employment: 1973-Present, Vice President of Development, Club Corporation of America, Dallas, Texas. 1970-72, Private practice, Dallas, Texas. 1968-70, Investigator-Prosecutor, State Securities Board, Austin and Dallas, Texas. 1966-68, Private practice, Llano, Texas

Admitted to bar: 1966, Texas

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## APPENDIX V

STATUS REPORT AS OF APRIL 24, 1974

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## **I. Introduction**

The results of the factual investigation of the Impeachment inquiry staff of the Committee on the Judiciary will be reflected in the initial factual presentation to the committee, presently scheduled by the chairman to commence the week of May 6. The presentation will focus on areas of inquiry described in the March 1, 1974, status report to the committee.

The principal work of the impeachment inquiry staff of the Committee on the Judiciary in conducting its factual investigation has been to (1) analyze the information collected by the Senate Select Committee on Presidential Campaign Activities; (2) analyze the information collected by other congressional committees, including the Joint Committee on Internal Revenue Taxation; (3) obtain and analyze all material furnished the Special Prosecutor by the White House; (4) obtain and analyze the report and all material furnished by the District of Columbia grand jury; (5) obtain and analyze certain information from the departments of the executive branch and from certain of the independent agencies; (6) interview a number of witnesses; (7) prepare detailed and specific requests for additional material from the President, together with memoranda justifying each of such requests; and (8) commence preparation of a factual presentation to be made to the committee.

The purpose of this memorandum is to report to the Committee on the Judiciary the progress of the inquiry staff's investigation in certain of the factual areas and categories described in the staff's report of March 1. In each area and category noted in the March 1 report, but not specifically mentioned in this memorandum, the investigation is continuing.

## **II. Report of Status**

Paragraph and subparagraph references in this memorandum correspond to those used respecting comparable subject matter in the March 1 report.

Specific factual areas and categories are reported on as follows:

### **D. ALLEGATIONS CONCERNING IMPROPRIETIES IN CONNECTION WITH THE PERSONAL FINANCES OF THE PRESIDENT**

On April 3, 1974, the Joint Committee on Internal Revenue Taxation released the report of its staff: "Examination of President Nixon's Tax Returns for 1969 through 1972." The staff reported that the President has improperly treated as not taxable certain items of capital

gain, had not reported certain items of imputed income, and had claimed a number of tax deductions which were not permissible.

The Joint Committee staff reported that the deduction the President claimed for a gift of pre-presidential papers in 1969 should be disallowed. The President had valued the papers at \$576,000; for the years 1969 through 1972, \$482,018 had been deducted. The Joint Committee staff reported that the gift was not completed until after July 25, 1969, the effective date of a provision in the Tax Reform Act of 1969 eliminating tax deductions for gifts of this kind. In addition, the Joint Committee staff reported that restrictions in the deed giving the papers to the United States made the gift only a "future interest" in the papers, which could not qualify for the deduction, regardless of the date of gift. The staff also reported that a 1968 gift of papers was similarly not deductible at that time because of restrictions contained in the deed, and therefore that a carryover deduction for a portion of that gift was not available in 1969.

In his 1969 return, the President claimed that his sale of an apartment in New York and purchase of an estate in San Clemente constituted a change of principal residence and therefore the gain on the apartment's sale was not taxable. The staff reported that, since the President and Mrs. Nixon spent only 15 percent of their time in San Clemente within 1 year of the sale of the New York apartment, San Clemente did not constitute their principal residence for Federal tax purposes during that period and the \$151,848 capital gain from the sale was therefore taxable.

In his return for 1970, the President reported that the sale of a portion of his San Clemente property had resulted in no taxable gain. The staff reported that the accounting treatment of the sale was incorrect and that in fact the President realized a taxable capital gain of \$117,836 on the sale.

In his returns for 1969 through 1972, the President claimed as deductions for business expenses 25 percent of the cost of operating and maintaining San Clemente, including depreciation, and 100 percent of operating and maintenance expense, including depreciation, of one of his houses at Key Biscayne. The Joint Committee staff concluded that the President's business use of these houses was for his personal convenience, and was not "required as a condition of employment" or "appropriate and helpful," the standards applied by the courts for determining deductibility of costs related to homes used for business purposes. The total of deductions disallowed for business use of these properties was \$56,955. On the other hand, the Joint Committee staff allowed the President a \$22,653 deduction on the nonresidential portion of the Key Biscayne property as an investment expense.

During the 4 years covered by the report, the President also deducted \$47,766 as "expenses incurred in the performance of official functions as President," including the cost of food, flowers, Christmas cards, gifts, and the like. The Joint Committee staff requested documentation substantiating the business purposes of these expenses, but none was supplied, and the deductions therefore were disallowed.

The Joint Committee staff also disallowed a \$3,331 deduction during the 4 years for depreciation on a credenza in the President's office in Key Biscayne and the Cabinet table in the White House. The staff reported that the President did not show the credenza met the appropriate business-use test. The staff suggested that the Government reimburse the President for the cost of the Cabinet table, but concluded the depreciation was not deductible.

In 1972 the President's daughter, Patricia Nixon Cox, paid tax on \$11,617 as her share of the profit from the sale of Florida real estate that had been purchased by the President in 1967. The Joint Committee staff requested substantiation of an asserted agreement between the President and his daughter in 1967 allocating to her a share of the profit. No contemporaneous written evidence was supplied, and the \$11,617 was attributed to the President for 1972.

The Joint Committee staff examined the manifests of Government aircraft flights during each of the years 1969 through 1972 on which the President's family or friends traveled without him. Of 411 flights, at least 341 were not for official business, the staff reported, and it imputed income of \$27,015 to the President, representing the equivalent first-class commercial air fare for the flights (net of \$6,693 which the President had reimbursed to the Treasury). In attributing plane flights of others as income to the President, the Joint Committee staff used precedents in which business executives have been taxed for the private use of corporate aircraft.

During the years 1969 through 1972, the Government expended significant sums for security purposes on the President's properties at San Clemente and Key Biscayne, but the Joint Committee staff also identified significant expenditures that benefited the President. The staff imputed income to the President where (1) it seemed likely that the President would have incurred an expense personally even if the Government had not, (2) an expenditure primarily benefited the President, or (3) an expenditure was for security purposes, but the original plans were modified because of personal esthetic preferences, resulting in a substantial increase in cost. On this basis the staff imputed income of \$92,298 to the President. (These improvements to properties are discussed in more detail below, under the subheadings "San Clemente" and "Key Biscayne.")

In summary, the staff of the Joint Committee concluded that the President's taxes for 1969-72 should have been increased by \$476,431 (including interest) as a result of the following errors in computing taxable income:

A. Income to the President which he failed to report on his income tax returns (1969-72):

1. Gain on sale of San Clemente property.....	\$117, 836
2. Gain on sale of New York City apartment.....	151, 848
3. Gain on sale of Florida lots.....	11, 617
4. Personal use of Government aircraft by family and friends...	27, 015
5. Improvements to San Clemente and Key Biscayne properties .....	92, 298

Total income not reported.....	400, 614
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B. Deductions improperly taken on President's income tax returns (1969-72) :

1. 1969 Gift of papers-----	482,018
2. Business deductions :	
(a) San Clemente property-----	32,168
(b) Key Biscayne property-----	24,787
(c) White House office furniture-----	3,331
(d) Christmas cards-----	6,750
(e) Moving and storage-----	259
(f) Flowers-----	690
(g) Harry Winston, Inc-----	403
(h) Dues-----	4
(i) "Treasury" (including "Masked ball")-----	5,939
(j) Gorham Co-----	2,084
(k) Hotel Washington-----	393
(l) American Airlines-----	798
(m) Guest fund-----	29,794
(n) Cabinet chair-----	500
(o) Unidentified-----	151
3. Gasoline tax-----	148
Total deductions not allowable-----	590,217

C. Credit: Allowable deductions not taken on President's income tax returns (1969-72) :

Key Biscayne property-----	22,653
Sales tax-----	1,274
Gasoline tax-----	10
Total-----	23,937

On April 3, 1974, the date the Joint Committee staff report was published, the White House announced that it had received a "statement from the Internal Revenue Service" that assessed the President \$432,787.13 for tax due but not paid for the years 1969 through 1972, plus interest. (The relatively small difference between this amount and the Joint Committee staff's finding has not been explained.) The Joint Committee staff made no investigation whether or not there was criminal tax fraud for which the President is responsible. Attorney General Saxbe has made a formal delegation to the Special Prosecutor of authority to investigate possible tax fraud in connection with the question of the pre-Presidential papers. We assume that whatever investigation the Special Prosecutor conducts is likely to be prolonged and that its result will not be available to the committee under the committee's contemplated timetable.

On March 22, 1974, the Joint Committee staff wrote to the President's tax counsel enclosing a series of questions, answers to which it believed would be helpful in understanding certain matters respecting the President's returns. No reply to this letter was received.

The Government Activities Subcommittee of the House Committee on Government Operations and the Comptroller General of the United States, as well as the staff of the Joint Committee on Internal Revenue Taxation, have studied Government expenditures at the President's homes at San Clemente and Key Biscayne. The joint committee staff concluded that \$92,298 of those expenditures constituted personal income to the President.

## SAN CLEMENTE

(a) The staff reported that the entire amount spent on a fireplace exhaust fan in 1971 was personal income (\$389).

(b) The staff reported that the entire amount spent enlarging den windows in 1969 was personal income (\$1,600).

(c) For reasons of the personal safety of the President, in 1969 the Secret Service had installed a new electric forced-air heating system (\$18,493) in lieu of a \$12,988 gas system the President planned to install. The staff reported that the amount the President would have spent, but for the action of the Secret Service, constituted personal income (\$12,988).

(d) During 1971 electronic protective gear was installed in a gazebo and the gazebo was renovated. The staff estimated that 75 percent of the cost of the renovation accrued to the personal benefit of the President and constituted personal income (\$4,981).

(e) According to the staff, a boundary survey and structural report on the property done during 1969 was for the personal benefit of the President. The cost to the Government of these surveys was deemed to be income to the President (\$5,473).

(f) The staff reported that \$3,800 was paid by the Government in 1969 for a part of work on the sewer system. The staff concluded that the work was necessitated by construction of a swimming pool for the personal benefit of the President and that the cost of this sewer work therefore constituted taxable income to the President (\$3,800).

(g) Wrought iron handrails were installed on the property in 1969. The staff concluded that these were for the personal benefit of the President and that their cost therefore constituted personal income (\$998).

(h) The staff estimated that one-third of the amount expended during 1969, 1970 and 1971 for paving was solely for the personal benefit of the President. This amount, less approximately \$1,000 paid by the President, was deemed income to the President (\$5,867).

(i) According to staff estimates, about \$7,000 was spent by the Government in 1969 for construction of a handrail and railroad cross-over. Concluding that half the expense was attributable to the personal comfort of the President, the staff imputed income in that amount to the President (\$3,500).

(j) The Government expended \$135,700 on landscape construction work during 1969. The staff concluded that at least \$3,600 would have been spent by the President regardless of needs for his protection and reported that this amount constituted taxable income (\$3,600).

(k) The staff reported that no more than half the ordinary and recurring landscape maintenance expense was related to security needs. Half the amount paid for such maintenance, less the amount actually paid by the President, was \$5,799 in 1969, \$15,635 in 1970, \$1,593 in 1971 and \$391 in 1972. The staff concluded that those amounts should be treated as taxable income (\$23,418).

## KEY BISCAYNE

(a) In connection with security work done in 1969, a shuffleboard court, replacement value \$400, was destroyed. It was replaced by the Government with one costing \$2,000. The Joint Committee staff concluded the difference was taxable income to the President (\$1,600).

(b) A \$71,100 fence and hedge system was installed at Government expense. The staff estimated that \$12,679 of that amount was due to the aesthetic preference of the President and should be deemed personal income (\$12,679).

(c) As work progressed on security-related landscape construction, changes were made to coincide with the President's desires. The Government paid the cost of such changes (\$4,685), \$3,414 of which represented "design additions." The joint committee staff concluded that the latter was taxable income to the President (\$3,414).

(d) The staff estimated that no more than half the ordinary and recurring landscape maintenance expense was related to security needs, and considered the other half (\$1,124 in 1969, \$2,165 in 1970, \$1,992 in 1971, and \$2,710 in 1972) to be for the President's personal benefit. Income was imputed to the President according to (\$7,991).

In its inquiry into the President's personal finances and taxes, the staff is considering the findings of the staff of the Joint Committee on Internal Revenue Taxation, the evidence assembled by the Joint Committee staff, and other material. It appears to the staff that underlying the questions raised by these materials is the fact that the President, as Chief Executive, is a superior officer within the Federal Government to the officials and employees of the Internal Revenue Service and the Justice Department charged with administering and enforcing the income tax laws. To aid in its analysis, the staff is considering the President's tax liabilities and returns from the perspective of the criteria normally applied by the Department of Justice in the case of ordinary taxpayers.

Because the Joint Committee did not investigate whether or not there was criminal tax fraud for which the President is responsible, and because the Special Prosecutor's investigation has just recently begun in connection with the gift of the pre-Presidential papers, it will be necessary for the committee to conduct its own investigation if it is to pursue this subject. In this connection it may be desirable for the committee to submit to the President interrogatories similar to those submitted to his counsel on March 22, 1974 by the staff of the Joint Committee.

#### E. ALLEGATIONS CONCERNING EFFORTS BY THE WHITE HOUSE TO USE AGENCIES OF THE EXECUTIVE BRANCH FOR POLITICAL PURPOSES, AND ALLEGED WHITE HOUSE INVOLVEMENT WITH ELECTION CAMPAIGN CONTRIBUTIONS

In its March 1 report, the staff noted 26 separate categories in this factual area, recognizing that time and resources did not permit an exhaustive and conclusive investigation of the allegations in each category. Instead, the initial task of the staff was to review and report on material on the public record and from other available sources, so that



the committee might be in a position to determine which matters warrant further investigation.

The staff has reviewed (i) material supplied by the White House pursuant to request, (ii) testimony before and material gathered by the Senate Select Committee on Presidential Campaign Activities, (iii) testimony before and material gathered by congressional committees in connection with other relevant inquiries, (iv) material supplied in response to the chairman's request by various independent and executive branch agencies and departments, and (v) material appearing in the public press. On the basis of that review, the staff does not presently contemplate further inquiry into the categories discussed below. In each case, either there is no substantial evidence known to the staff that supports an allegation of wrongdoing or the evidence is insufficient to justify devoting the resources required to complete a thorough investigation.

(2) Allegations of White House involvement with illegal campaign contributions exacted from corporations under pressure of threats of governmental retaliation or promises of governmental favors.

(3) Allegations concerning illegal campaign contributions received from foreign nationals in exchange for promises of favorable treatment by government agencies.

(4) Allegations that illegal campaign contributions were received from labor unions.

The solicitation of campaign contributions in a democracy presents difficult factual and legal issues as related to the question of grounds for impeachment.

It has been alleged that individuals responsible for fund-raising for the President's 1972 reelection campaign systematically employed threats of adverse governmental action or promise of favors in order to obtain contributions from corporations, corporate officers, labor unions, and foreign nationals.

The staff is continuing its inquiry into some of these allegations, focusing primarily on the Howard Hughes \$100,000 contribution, the contribution by Robert L. Vesco, the contributions by representatives of the dairy industry and the financial pledge by a subsidiary of ITT related to the 1972 Republican National Convention. The purpose of this inquiry is to determine the extent, if any, of Presidential responsibility for unlawful campaign contributions and illegal or improper executive branch action in response to them.

(5) Allegations that campaign contributions were received from persons in exchange for business with the Federal Government.

An investigation by the Joint Economic Committee has failed to substantiate charges that a systematic effort was made to obtain contributions for the President's reelection from Government contractors. The staff does not believe that further investigation is warranted.

(8) Allegation that the Comptroller of the Currency granted a bank charter to a Minnesota bank in return for campaign contributions.

Members of the staff have reviewed the files of the Comptroller of the Currency relevant to this allegation and have discussed it with a Deputy Comptroller of the Currency. No evidence has been found that the bank charter was granted other than in the ordinary course or that political pressure was brought to bear on the Comptroller's office.

(9) Allegations that the White House caused friends of the President to be given favored treatment by the Comptroller of the Currency.

These allegations concern the granting of a charter to a New York bank organized by an associate of a friend of the President, and the denial of a charter for a Florida bank to compete with one owned by another friend of the President. Members of the staff have reviewed the relevant files of the Comptroller of the Currency and have discussed these matters with a Deputy Comptroller of the Currency. The evidence does not support the allegations that the decisions by the Comptroller of the Currency in these cases resulted from political pressure or interference.

(10) Allegations that lawsuits were not prosecuted by the Environmental Protection Agency because of campaign contributions on behalf of the corporations involved.

The staff has reviewed relevant files of the Environmental Protection Agency and has discussed this matter with staff of the Conservation and Natural Resources Subcommittee of the House Government Operations Committee. No evidence has been found supporting the allegations that corporate contributions played a role in administrative decisions favorable to the contributors.

(12) Allegations of attempts to obtain campaign contributions in return for promises of assistance with the Federal Housing Administration.

The staff's review of testimony before the Senate select committee and other relevant material has revealed conflicting testimony as to whether a high campaign official attempted to obtain a contribution in return for promises to aid the contributor in an FHA matter. The nature of the accusatory testimony suggests further investigation would not be materially helpful to the committee.

(14) Allegations that the Department of Justice failed to prosecute certain lawsuits as a result of campaign contributions by defendants.

The staff has reviewed the relevant files of the Criminal Division of the Department of Justice, documents from and testimony before the Senate select committee, and records of campaign contributions allegedly related to three Department of Justice decisions not to proceed in lawsuits against administration supporters. While in two cases there is evidence of contacts between White House aides and the Department of Justice, no evidence was found that the Department of Justice failed for improper reasons to prosecute any of them.

(18) Allegations that the Antitrust Division dropped an investigation of a corporation because its owner was a friend of the President.

Members of the staff have reviewed the Department of Justice files relevant to this matter. They indicate that the case was handled properly, in a routine manner and without outside interference. In hearing before the Senate Committee on the Judiciary on October 29, 1973, former Special Prosecutor Cox indicated that his staff similarly had found no evidence of wrongdoing with respect to this matter.

(20) Allegation that a corporation obtained permission to increase prices after one of its principals made a substantial campaign contribution.

Members of the staff have reviewed the relevant files of the Price Commission and have discussed the case with a member of the staff

of the Cost of Living Council (the custodian of the records of the Price Commission, which no longer exists). While the evidence indicates that there may have been White House interest in the Price Commission decision, no support has been found for the allegation that this affected the action of the Price Commission or that the action taken by the Commissioner was improper.

(25) Allegation that the Department of Commerce failed to put into effect certain safety standards because of contributions by the industry involved to the President's reelection campaign.

A Department of Commerce decision favorable to an industry occurred at about the same time campaign contributions for the President's reelection were received from members of that industry. The evidence developed by a Senate select committee investigation does not support the allegation of a link between the two or that the Department of Commerce action was improper.

(26) Allegation that in exchange for a contribution to the President's reelection campaign the Department of Interior failed to revoke an import allocation grant to an oil corporation.

Members of the staff have reviewed the Department of Interior files relevant to this allegation. Although a substantial campaign contribution was followed by favorable Department of Interior action, there is no indication in the files of procedural irregularity, and the staff has not found that the evidence supports the allegation that the contribution and the Department of Interior decision were related or that political pressure or interference was involved.

## F. ALLEGATIONS CONCERNING OTHER MISCONDUCT

### 1. THE BOMBING OF CAMBODIA

The inquiry staff has completed its preliminary review of public statements on this subject and available congressional testimony of executive branch officials, including those within the Department of State, the Department of Defense, and the Executive Office of the President.

On March 27, 1974, Senator Hughes presented to the Senate a summary of the Senate Armed Services Committee's report of its hearings on secret U.S. military operations in Southeast Asia. Congressional Record S4491-4494, March 27, 1974 (daily ed.). Senator Hughes' summary referred to evidence of both bombing in Cambodia, allegedly in violation of Congressional restrictions on U.S. military activities in Southeast Asia, and falsification of Defense Department bombing records and false reporting of operations to the Senate. On March 29 the staff was advised that the report of the Senate Armed Services Committee's hearings would be available on or about April 5, 1974. Subsequently the staff was informed that the release of the Senate committee's report had been deferred in order to complete the editing of classified portions of the report. It is hoped that it will be possible to arrange for early access by the staff to all relevant materials secured by the Senate committee.

The staff believes that review of these materials can be completed within 7 to 10 days after receipt, enabling the staff then to report further to the committee.



## 2. THE IMPOUNDMENT OF FUNDS, AND 3. THE DISMANTLING OF THE OFFICE OF ECONOMIC OPPORTUNITY

Although listed separately in the March 1 report, these categories involve substantially similar issues. The "dismantling of OEO"—and particularly action taken in 1973 with respect to the Community Action Program—is one instance of the class of actions included within the category of "impoundment." "Impoundment" itself is an inexact term. As generally used with reference to actions by the Nixon administration, especially during fiscal year 1973, it covers steps taken to control Federal spending by reducing allotments or allocations under various programs, effectively terminating others by failing to process applications for them, and ordering the use of grant funds under some programs (such as community action) to phase out the programs of grantees, as well as refusals to obligate the entire amount appropriated by law for particular programs.

The staff has reviewed more than 50 court decisions in which actions within these categories have been challenged in litigation, as well as congressional hearings and other materials. The cases have involved a number of different statutory provisions and a wide variety of factual situations and legal arguments. The courts have held the issues raised by most of the challenged impoundments to be justifiable and generally have declared, on the basis of construction of the statutes involved, that the impoundments were illegal. The administration appears to have complied with those court determinations that have become final.

The court cases passing upon the administration's claim of a right to impound funds have arisen in different districts and circuits. The courts have sometimes found the statutory language involved to be ambiguous. The legal arguments presented on behalf of the executive's action, although generally not successful, were respectable. The administration position has been accepted in a few suits. The actions of the President and of inferior executive officials with respect to impoundment of funds appear generally to have been open and public. The practice of impoundment appears to have diminished since the series of adverse judicial decisions in 1973. The administration has publicly announced a shift away from its previous policy of impoundment. While the adverse impact of a delay in implementing a congressional appropriation cannot be wholly counteracted retroactively, it does appear that where impoundments have been successfully challenged in court, the funds have been allotted or obligated. Under all the circumstances, no one of which is determinative, the staff is not presently conducting further investigation with respect to these categories.

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APPENDIX VI  
IMPEACHMENT INQUIRY PROCEDURES

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## IMPEACHMENT INQUIRY PROCEDURES

The Committee on the Judiciary states the following procedures applicable to the presentation of evidence in the impeachment inquiry pursuant to H. Res. 803, subject to modification by the Committee as it deems proper as the presentation proceeds.

A. The Committee shall receive from Committee counsel at a hearing an initial presentation consisting of (i) a written statement detailing, in paragraph form, information believed by the staff to be pertinent to the inquiry, (ii) a general description of the scope and manner of the presentation of evidence, and (iii) a detailed presentation of the evidentiary material, other than the testimony of witnesses.

1. Each Member of the Committee shall receive a copy of (i) the statement of information, (ii) the related documents and other evidentiary material, and (iii) an index of all testimony, papers, and things that have been obtained by the Committee, whether or not relied upon in the statement of information.

2. Each paragraph of the statement of information shall be annotated to related evidentiary material (e.g., documents, recordings and transcripts thereof, transcripts of grand jury or congressional testimony, or affidavits). Where applicable, the annotations will identify witnesses believed by the staff to be sources of additional information important to the Committee's understanding of the subject matter of the paragraph in question.

3. On the commencement of the presentation, each Member of the Committee and full Committee staff, majority and minority, as designated by the Chairman and the Ranking Minority Member, shall be given access to and the opportunity to examine all testimony, papers and things that have been obtained by the inquiry staff, whether or not relied upon in the statement of information.

4. The President's counsel shall be furnished a copy of the statement of information and related documents and other evidentiary material at the time that those materials are furnished to the Members and the President and his counsel shall be invited to attend and observe the presentation.

B. Following that presentation the Committee shall determine whether it desires additional evidence, after opportunity for the following has been provided:

1. Any Committee Member may bring additional evidence to the Committee's attention.

2. The President's counsel shall be invited to respond to the presentation, orally or in writing as shall be determined by the Committee.

3. Should the President's counsel wish the Committee to receive additional testimony or other evidence, he shall be invited to submit written requests and precise summaries of what he would propose to show, and in the case of a witness precisely and in detail what it is expected the testimony of the witness would be, if called. On the basis of such requests and summaries and of the record then before it, the Committee shall determine whether the suggested

evidence is necessary or desirable to a full and fair record in the inquiry, and, if so, whether the summaries shall be accepted as part of the record or additional testimony or evidence in some other form shall be received.

C. If and when witnesses are to be called, the following additional procedures shall be applicable to hearings held for that purpose:

1. The President and his counsel shall be invited to attend all hearings, including any held in executive session.

2. Objections relating to the examination of witnesses or to the admissibility of testimony and evidence may be raised only by a witness or his counsel, a Member of the Committee, Committee counsel or the President's counsel and shall be ruled upon the Chairman or presiding Member. Such rulings shall be final, unless overruled by a vote of a majority of the Members present. In the case of a tie vote, the ruling of the Chair shall prevail.

3. Committee Counsel shall commence the questioning of each witness and may also be permitted by the Chairman or presiding Member to question a witness at any point during the appearance of the witness.

4. The President's counsel may question any witness called before the Committee, subject to instructions from the Chairman or presiding Member respecting the time, scope and duration of the examination.

D. The Committee shall determine, pursuant to the Rules of the House, whether and to what extent the evidence to be presented shall be received in executive session.

E. Any portion of the hearings open to the public may be covered by television broadcast, radio broadcast, still photography, or by any of such methods of coverage in accord with the Rules of the House and the Rules of Procedure of the Committee as amended on November 13, 1973.

F. The Chairman shall make public announcement of the date, time, place and subject matter of any Committee hearing as soon as practicable and in no event less than twenty-four hours before the commencement of the hearing.

G. The Chairman is authorized to promulgate additional procedures as he deems necessary for the fair and efficient conduct of Committee hearings held pursuant to H. Res. 803, provided that the additional procedures are not inconsistent with these Procedures, the Rules of the Committee, and the Rules of the House. Such procedures shall govern the conduct of the hearings, unless overruled by a vote of a majority of the Members present.

H. For purposes of hearings held pursuant to these rules, a quorum shall consist of ten Members of the Committee.

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## APPENDIX VII

DONOHUE RESOLUTION AND ARTICLES OF IMPEACHMENT

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## RESOLUTION OFFERED BY MR. DONOHUE

*Resolved*, That Richard M. Nixon, President of the United States, is impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of all of the people of the United States of America, against Richard M. Nixon, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

### ARTICLE 1

In his conduct of the office of President, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of the President and to the best of his ability, preserve, protect and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed and impeded the administration of justice in that:

On June 17, 1972, and prior thereto, agents of the Committee to Re-elect the President committed illegal entry of the headquarters of the Democratic National Committee in Washington, D.C. for the purpose of securing political intelligence. Subsequent thereto, Richard M. Nixon, using the powers of his high office, has made it his continuing policy to act, and in furtherance of that policy, did act, directly and personally and through his close subordinates and agents to delay, impede, and obstruct the investigation of such illegal entry; to cover up and conceal the identity of those responsible; and, to cover up and to conceal the existence and scope of related unlawful covert activities.

The means used to implement this policy have included one or more of the following or others:

(1) Making false or misleading statements to lawfully authorized investigative officers and employees of the Government of the United States or in duly instituted judicial proceedings.

(2) Approving, condoning, acquiescing in, and counseling witnesses to give false or misleading statements to investigative officers or false or misleading testimony in duly instituted judicial and congressional proceedings.

(3) Interfering with the conduct of investigations by the Department of Justice, the Federal Bureau of Investigation, and the Watergate Special Prosecution Force.

(4) Approving and concealing the payment of money for the purpose of obtaining the silence of participants in the illegal entry into the headquarters of the Democratic National Committee and other illegal activities.

(5) Endeavoring to misuse the Central Intelligence Agency.

(6) Suppressing, withholding, and concealing relevant and material evidence.

(7) Endeavoring to cause prospective defendants, and persons duly tried and convicted, to expect favored treatment in return for their silence or false testimony.

(8) Disseminating information received from officers of the U.S. Department of Justice to subjects of the investigations for the purpose of aiding and assisting their avoidance of criminal liability.

(9) Making false or misleading public statements in his capacity as President for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted into the allegations of misconduct at the White House and the Committee for the reelection of the President and that there was no involvement of personnel from the White House or the Committee to Reelect the President in such misconduct.

All of this has been carried on by Richard M. Nixon in a manner contrary to his trust as President, to the manifest injury of the confidence of the Nation and to the great prejudice of the cause of law and justice, and to the subversion of constitutional government.

Wherefore, Richard M. Nixon by such conduct, warrants impeachment and trial, and removal from office.

## ARTICLE II

In his conduct of the office of President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office and to preserve, protect and defend the Constitution, and in violation of his constitutional duty to take care that the laws be faithfully executed, has abused the powers vested in him as President by one or more of the following, either directly or through his subordinates or agents:

(1) He has used the executive power to authorize illegal surveillance and investigations of individuals by the Federal Bureau of Investigation, the Secret Service, and agents of the office of the President and the use and dissemination of information obtained thereby in violation of the constitutional rights of citizens.

(2) He has used the executive power to unlawfully establish a special investigative unit within the White House to engage in unlawful covert activities. This special investigative unit was supervised by one of the presidential assistants and was financed in part by the unlawful conversion of funds raised for campaign purposes and controlled on behalf of Richard M. Nixon by one of his assistants. On September 3, 1971, agents of the special investigative unit, in order to obtain information to be used by Richard M. Nixon and his subordinates in public defamation of Daniel Ellsberg, unlawfully committed burglary at the office of Dr. Lewis Fielding, Ellsberg's psychiatrist, in the State of California.

(3) He has endeavored to use the executive power to obtain confidential tax return information from the Internal Revenue



Service and to cause tax investigations to be initiated and conducted in a discriminatory manner.

(4) He has endeavored to use the executive power to interfere with the proper administration of the Federal Bureau of Investigation:

(A) By directing that the Federal Bureau of Investigation not maintain regular indices of electronic surveillance records of individuals who were wire-tapped pursuant to his authorization and that such records of this surveillance as were kept be removed from the Federal Bureau of Investigation and concealed at the White House to prevent revelation of the electronic surveillance.

(B) By pursuing a policy of concealing the activities of those involved in the illegal entry into the headquarters of the Democratic National Committee pursuant to which policy certain documents were delivered to the Acting Director of the Federal Bureau of Investigation contrary to normal Federal Bureau of Investigation procedures and the Acting Director instructed to conceal these documents.

(C) By obstructing and impeding, and causing his subordinates to obstruct and impede pursuant to his policy, the investigation by the Federal Bureau of Investigation of the illegal entry into the headquarters of the Democratic National Committee and related matters.

(5) He has endeavored to use the executive power to interfere with the proper conduct of Justice Department investigations of the illegal entry into the headquarters of the Democratic National Committee and related matters through misrepresentations, concealment of information, and other means, including the removal from office of the first Watergate Special Prosecutor; by revealing information he obtained from the Justice Department by virtue of his official position to targets of the investigation to enable them to prepare their testimony and tactics; by directing that targets of the investigation be assured that they might receive executive clemency if they continued to withhold certain information or testimony; by instructing his official subordinates to testify untruthfully or incompletely; and by commanding and furthering a policy of concealment.

(6) He has used the executive power to induce the Central Intelligence Agency to provide assistance for unlawful covert activities for his political benefit and to impede and delay the Federal Bureau of Investigation's investigation of the illegal entry into the headquarters of the Democratic National Committee.

(7) He has used the executive power to impede lawful inquiries into the conduct of his office by suppressing, withholding, and concealing evidence relevant to duly authorized investigations; by furnishing documents and things to agencies of the executive branch and committees of Congress in a manner calculated to mislead; by publicly releasing edited transcripts of tape recordings instead of complying with the subpoenas of the committee on the Judiciary of the House of Representatives; by making false and deceptive statements to the American people regarding

his knowledge and action concerning matters under investigation; and by attempting personally and through his agents to undermine the legitimacy of these inquiries in the eyes of the American people.

(8) He has failed without lawful cause or excuse to produce information and materials as directed by duly authorized subpoenas issued by the Committee on the Judiciary of the House of Representatives on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974, and willfully disobeyed such subpoenas. These subpoenas were issued under the authority of the House of Representatives, in order to assist its investigation into whether sufficient grounds exist for the impeachment of Richard M. Nixon. In refusing to produce them, he has acted in contempt of the House of Representatives and in defiance of the power of impeachment, vested solely in the House of Representatives.

All of this has been carried on by Richard M. Nixon in a manner contrary to his trust as President, to the manifest injury of the confidence of the Nation and to the great prejudice of the cause of law and justice, and to the subversion of constitutional government.

Wherefore, Richard M. Nixon by such conduct warrants impeachment and trial, and removal from office.





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